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No. _____

JOSEPH F. SPANIOL, JR.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

RUSSELL F. PARAVECCHIO, D.M.D.,
Petitioner,
v.

MEMORIAL HOSPITAL OF LARAMIE COUNTY,

AND

DEPAUL HOSPITAL,
Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF WYOMING**

BRUCE A. SALZBURG *
FREUDENTHAL, SALZBURG, BONDS &
RIDEOUT, P.C.
314 East 21st Street
Cheyenne, Wyoming 82003-0387
(307) 634-2240

JONATHAN B. SALLET
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
(202) 293-6400

* Counsel of Record



QUESTION PRESENTED

Whether a state law that prohibits a fully-qualified, residency-certified, dentist anesthesiologist from practicing as a staff anesthesiologist at a private hospital violates the Fourteenth Amendment of the United States Constitution? *

* The parties to this proceeding are Russell F. Paravecchio, D.M.D., Petitioner, and Memorial Hospital of Laramie County and DePaul Hospital, Respondents.



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PROCEEDINGS BELOW

The decision sought to be reviewed is *Paravecchio v. Memorial Hospital, et al.*, No. 87-22 (September 17, 1987). The decision, which has not yet been reported in the Pacific Reporter, appears in the Appendix (hereinafter "App.") at 1a-16a.

JURISDICTION OF THIS COURT

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3). The decision sought to be reviewed was entered on September 17, 1987. A timely Petition for Rehearing was denied by Order entered on October 7, 1987. App. at 17a.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Section One of the Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The uncontested allegations in this case establish that: The petitioner, Dr. Russell Paravecchio, D.M.D., is a licensed dentist who, in addition to his dental training, holds a Certificate of Residency in Anesthesiology from the University of Oregon that was issued after he successfully completed a two-year residency in anesthesiology approved by the American Medical Association and the American Board of Anesthesiology. Dr. Paravecchio is fully qualified and has served as a non-dental staff anesthesiologist in the United States Army and the Veterans Administration Hospital in Cheyenne, Wyoming. In addition, he is fully trained and competent to perform the full range of anesthesia services to all patients at private hospitals in Wyoming. *See App. at 24a-26a, 33a-35a.*

The instant controversy began when Dr. Paravecchio obtained a ruling from the Wyoming State Board of Dental Examiners that a dentist anesthesiologist can also practice the full scope of clinical anesthesiology in that state.¹

¹ Section 33-15-128(a)(xiv) W.S. 1977 (1986 Cum. Supp.) delegates to the Board the power to recognize any specialties within the practice of dentistry. Medicare regulations also recognize the practice of "non-dental" anesthesiology by dentist anesthesiologists. 48 F.R. 8902, 8929 (March 2, 1983); *see also* Section 42-4-103 (a)(ii)(U) W.S. 1977 (1986 Cum. Supp.) (recognizing medical services by dentist "not primarily provided for the care, treatment, removal or replacement of the teeth or structures directly supporting teeth.").

The Wyoming State Board of Medical Examiners, which received a similar request from Dr. Paravecchio, properly ruled that it did not have jurisdiction over this question.

Dr. Paravecchio then applied to serve as a staff anesthesiologist at two private hospitals in Wyoming, the Memorial Hospital of Laramie County and DePaul Hospital, which are the respondents here. The hospitals refused his request on the ground, *inter alia*, that Dr. Paravecchio does not have an M.D. degree.

Subsequently, Dr. Paravecchio filed actions, which were consolidated, against the two hospitals. Dr. Paravecchio sought a declaration that state law does permit him to practice as a staff anesthesiologist and that, if state law bars him from such practice, then the state law violates the Equal Protection Clause of the Fourteenth Amendment. App. at 26a, 36a. The trial court granted a motion to dismiss pursuant to Rule 12(b)(6) of the Wyoming Rules of Civil Procedure which, like its federal counterpart, requires that allegations of the complaint be taken as true. App. at 16a.

By decision dated September 17, 1987, the Wyoming Supreme Court affirmed the trial court judgment. App. at 1a-16a. The court ruled, *first*, that Wyoming state law permits Dr. Paravecchio to practice anesthesiology solely for dental purposes, and that the general practice of anesthesiology is not permitted to one, like Dr. Paravecchio, who has not been licensed as a medical doctor. App. at 13a.

Second, the court ruled that state law comports with the Fourteenth Amendment. The court recognized Dr. Paravecchio's uncontested assertion that "he has been declared a qualified anesthesiologist by an accredited residency program." App. at 13a. The court held, nonetheless, that it was free to "assume any conceivable state of facts that can reasonably sustain the challenged statutory

classification" App. at 15a. Taking this expansive view, the court rejected the constitutional claim by concluding that the state has a legitimate state interest in protecting the public health. The state court did not, however, set forth any factual analysis to justify its conclusion that the goal of protecting the public health is reasonably connected to a prohibition on practice by a dentist who has successfully completed a residency program in anesthesiology.

ARGUMENT

The Equal Protection Clause of the Fourteenth Amendment requires that similarly-situated persons be treated the same. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Thus, the gravamen of Equal Protection analysis will inevitably focus on the question whether a legislative classification fails to accord equal treatment for unjustified reasons. As this Court has explained, statutory distinctions may not rest on "a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne, Texas v. Cleburne Living Center, Inc., et al.*, 473 U.S. 432, 446 (1985); *Zobel v. Williams*, 457 U.S. 55, 61-63 (1982); *Department of Agriculture v. Moreno*, 413 U.S. 528, 535 (1973).

In this case, the Wyoming Supreme Court misapplied important and fundamental principles underlying the Equal Protection Clause by (i) failing to ask, at all, whether legitimate state goals are in fact furthered by the challenged classification, and (ii) inventing undisclosed facts to support the state law that are contravened by the uncontested allegations of the complaint.

The error in the state court's analysis deserves the full attention of this Court. State courts have the solemn responsibility of applying federal constitutional guarantees and must be deemed to be fully capable of doing so. But along with that responsibility comes the concomitant duty

to remain faithful to this Court's constitutional analysis. Review of this case is needed in order to demonstrate to state courts that they cannot disregard critical principles underlying the Equal Protection Clause.

The circumstances of this case make the necessity for review particularly compelling. Dr. Paravecchio is a fully-qualified anesthesiologist who, nonetheless, is barred from the practice of that profession. This Court has recognized in the past that restrictions on medical-care professionals also impinge the right of their patients to adequate medical care, *see Doe v. Bolton*, 410 U.S. 179, 188-89 (1973), and it has looked harshly at state legislation that protects professionals from competition, *see Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 285-288 (1985). Both concerns are directly implicated in Dr. Paravecchio's efforts to be permitted to practice his profession.

I. THE WYOMING SUPREME COURT OPINION DEMONSTRATES AN IMPORTANT MISUNDERSTANDING OF THE EQUAL PROTECTION CLAUSE

This Court has, over the years, struggled with the so-called "standards of review" that have come to dominate Equal Protection analysis. In recent times, the Court has stated that it will hew to the two (or three) tier approach that distinguishes between heightened scrutiny for racial and similar classifications and "rational basis" scrutiny employed when economic regulation is at issue. *See City of Cleburne, Texas v. Cleburne Living Center, Inc., et al.*, 473 U.S. at 440-42.

This case demonstrates that the enunciation of a standard does not, by itself, ensure that a court will apply the Equal Protection Clause with the sensitivity that the Constitution demands. Here, the court's entire discussion of the constitutional issue is contained in a single paragraph that merely identifies the legitimate state interest in protecting the health, safety, and welfare of its citi-

zens. App. at 15a-16a. The court never inquired whether that goal bears any relation to the prohibition as applied to Dr. Paravecchio.

The court's failure to ask this critical question may reflect its silent understanding that the state law wholly fails to advance any rational state goal. The flaw in the state's statutory scheme is that it fails to consider the most relevant fact: whether a person has been trained as an anesthesiologist through participation in an accredited residency program. Thus, under the court's analysis, a psychiatrist who has not completed a residency program may administer anesthesia (because he or she has a M.D. degree), but a person trained as an anesthesiologist through a residency program and permitted to practice as a staff anesthesiologist in a Veterans Administration hospital (like Dr. Paravecchio) may not.² Thus, the state classification bears no rational relation to the ability of a person to serve as an anesthesiologist. Indeed, the irony created by the state's illegitimate classification is that Dr. Paravecchio is qualified to teach anesthesiology (by virtue of his Certificate of Residency), but not to practice the profession himself.

Additionally, the distinction fails because it draws an irrational line separating the types of anesthesiology Dr. Paravecchio may practice. As the Wyoming Supreme Court's decision makes clear, Dr. Paravecchio may, within the scope of his dental license, administer all types of anesthesia so long as the surgeon conducts his operation in or around the human mouth. Dr. Paravecchio is deemed by state law to be competent to attend to the health, safety and welfare of a patient under general anesthesia while a maxillofacial surgeon removes a cancer from the patient's jaw. App. at 5a-8a. But, for unarticulated reasons, the

² This is not a completely hypothetical statement. Anesthesia services are provided in Wyoming by certain registered nurses "supervised" by physicians not trained or otherwise skilled in anesthesiology.

state has determined that a patient's health is threatened if Dr. Paravecchio were permitted to assist a surgeon who goes on to operate on the patient's ear or neck.³

This Court's analysis in *City of Cleburne, Texas v. Cleburne Living Center, Inc., et al.*, *supra*, demonstrates that the Equal Protection Clause requires a Court to examine with care whether legislative means actually furthers legislative goals. There, the Court struck down a local zoning ordinance that, through the denial of a special use permit, denied the operation of a group home for the mentally retarded in a geographical location in which other high-density uses were permitted. After concluding that the classification would not be subject to heightened scrutiny, the Court carefully examined each rationale advanced by the local government in support of the ban and concluded that none supported the distinction between a home used for the mentally retarded and a home used to house, for example, a college fraternity. The

³ Notwithstanding the Wyoming Supreme Court's ruling to the contrary, the Medical Practice Act does *not* preclude the practice of anesthesiology by Petitioner. The Act "does not apply to . . . [p]ersons licensed or registered under any other chapter of this title engaged in the scope of practice for the profession or occupation for which he is registered or licensed . . ." § 33-26-103(a)(viii), W.S. 1977 (1986 Cum. Supp.). Thus, the Wyoming legislature has recognized the overlap of the various health care practices regulated by Title 33 of the Wyoming Statutes. Moreover, the Medical Practice Act and Dental Practice Act delegate to the respective Board of Examiners the power to determine, within the general definitions provided, what acts are within the scope of practice for each health service. See § 33-26-202, W.S. 1977 (1986 Cum. Supp.) and §§ 33-15-102 and 33-15-128, W.S. 1977 (1986 Cum. Supp.).

Further evidence of the legislature's recognition of the overlap in health care services properly provided by different license holders is found in § 35-2-113, W.S. 1977 (1986 Cum. Supp.) which provides that the grant of hospital privileges may not be predicated "solely upon the type of degree of the applicant and the governing body shall consider the competency and character of each applicant." The failure to afford this procedural right to Dr. Paravecchio is, by itself, constitutional error. See *Perry v. Sindermann*, 408 U.S. 593, 601-02 (1972).

Cleburne analysis cannot be squared with the Wyoming Supreme Court's decision in this case.

More than mere error is, however, involved in this case. For three special reasons, the court's total failure to examine the relationship between the classification and the legitimate state goals in this case deserves this Court's plenary attention. *First*, a medical-health professional asserts the interests of his patients as well as his own professional interest. See *Singleton v. Wulff*, 428 U.S. 106, 117 (1976) (Blackmun, J.); *Doe v. Bolton*, 410 U.S. at 188-90; *Griswold v. Connecticut*, 381 U.S. 479, 481 (1965). In this case, patients of Dr. Paravecchio, including patients who can be treated by him at the Veteran's Administration Hospital in Wyoming, are prevented from employing him as a staff anesthesiologist at any private hospital in Wyoming. Also, surgeons who have selected him as an anesthesiologist at the Veteran's Administration Hospital cannot do so at private hospitals.

Second, the state law serves to protect a professional class, here persons who have received an M.D. degree, from competing against other persons who are equally-qualified to serve as staff anesthesiologists. The Court has required that a state carefully justify such a distinction, see *Supreme Court of New Hampshire v. Piper*, 470 U.S. at 285-88, but that justification is wholly lacking here. Indeed, an additional source of fully-qualified health care can only further the public interest by eliminating an unjustified monopoly.

Third, the case is important because the state court's analysis is not just a quirk; it represents an erroneous trend in the application of the Equal Protection Clause. In *Stern v. Tarrant County Hospital District*, 778 F.2d 1052 (5th Cir. 1985) (en banc), cert. denied, ____ U.S. ___, 106 S. Ct. 1957 (1986), the Fifth Circuit applied similar analysis to uphold a state law that barred osteo-

pathic physicians from exercising staff privileges at a state hospital. The dissent, in which five judges joined, demonstrated that no evidence had been presented to justify the classification.

This Court may have denied certiorari in the *Stern* case because it believed that misapplication of the Equal Protection Clause to medical professionals was an isolated event not requiring this Court's attention. The Wyoming Supreme Court opinion demonstrates, however, that both a state and the federal system have been infected by a view of the Equal Protection Clause that fails to require even a rational basis to be shown between a legislative means and the goal it is designed to serve.

II. THE WYOMING SUPREME COURT'S ANALYSIS, BASED ON IMAGINARY AND UNDISCLOSED FACTS THAT ARE CONTRARY TO THE UNCON- TROVERTED ALLEGATIONS OF THE COM- PLAINT, SERIOUSLY DISTORTS THE EQUAL PROTECTION CLAUSE

The complaints allege that Dr. Paravecchio is fully-qualified to practice as a staff anesthesiologist. That assertion has never been challenged and must be taken as true for the purposes of this case. The Wyoming Supreme Court nonetheless concluded that the state law barring Dr. Paravecchio from practicing as a staff anesthesiologist was rationally related to the goal of protecting the public safety. In reaching that conclusion, the court failed to identify any facts that support—or could have supported—the belief that a fully-qualified anesthesiologist poses a threat to public safety merely because he lacks an M.D. degree. On the contrary, if Dr. Paravecchio is equivalently trained, competent and experienced, as alleged, his practice of anesthesiology represents no compromise to the public safety.

The state court judgment demonstrates a serious misunderstanding of proper constitutional analysis. The

obligation to discern the basis for governmental action does not permit a court to ignore factual allegations that are properly before the court and that have never been challenged.

The state court's error is demonstrated by this Court's analysis in *First English Evangelical Lutheran Church v. County of Los Angeles*, ____ U.S. ___, 107 S. Ct. 2378 (1987). In that case a landowner filed a complaint alleging that a county ordinance had deprived it of all use of its property. The trial court dismissed the case on demurrer, which left the factual allegation uncontested. This Court decided the constitutional claim on that basis, while making it clear that its constitutional decision did not decide whether the ordinance actually "denied appellant all use of its" property. *Id.* at 2384.

The flaw in this analysis is important for the judicial system as a whole. The *First English* decision carefully separated legal theory from litigable facts and, in so doing, permitted a plaintiff to prove the facts necessary to demonstrate his constitutional claim. The Wyoming Supreme Court decision, under the guise of rational basis review, deprives a plaintiff of this opportunity by using the relaxed scrutiny of the "rational basis" test to dispense with the well-pleaded allegations of the complaint. Such analysis creates a new—and unjustifiable—burden for plaintiffs who will be unable to rely on the facts alleged in their complaint and will, therefore, be deprived of a fair opportunity to litigate constitutional claims. The existence of the new procedural burden requires this Court's attention.

CONCLUSION

For the reasons stated herein, the petition for a writ of certiorari to the Wyoming Supreme Court should be granted.

Respectfully submitted,

BRUCE A. SALZBURG *
FREUDENTHAL, SALZBURG, BONDS &
RIDEOUT, P.C.
314 East 21st Street
Cheyenne, Wyoming 82003-0387
(307) 634-2240

JONATHAN B. SALLET
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
(202) 293-6400

* Counsel of Record



APPENDIX

ЖІСИКІДА

APPENDIX

IN THE SUPREME COURT
STATE OF WYOMING
APRIL TERM, A.D. 1987

No. 87-22

September 17, 1987

RUSSELL F. PARAVECCHIO, D.M.D.,
Appellant (Plaintiff),

v.

MEMORIAL HOSPITAL OF LARAMIE COUNTY
and DEPAUL HOSPITAL,
Appellees (Defendants).

Appeal from the District Court of Laramie County
the Honorable Edward L. Grant, Judge

John J. Metzke and Thomas N. Long of Hirst & Apple-
gate, Cheyenne, for appellant.

W. Perry Dray and Gregory C. Dyekman of Dray, Madi-
son & Thompson, P.C., Cheyenne, for appellee Memorial
Hospital of Laramie County.

David H. Carmichael of Carmichael, McNiff & Patton,
Cheyenne, for appellee DePaul Hospital.

Jane A. Villemez of Charles E. Graves and Associates,
Cheyenne; and Hugh A. Burns of Burns & Figa, P.C.,
Denver, Colorado, filed amicus curiae for the American
Society of Dentist Anesthesiologists.

Before BROWN, C.J., and THOMAS, CARDINE,
URBIGKIT, and MACY, JJ.

BROWN, C.J., delivered the opinion of the court.
URBIGKIT, J., dissented.

BROWN, Chief Justice.

In this case, we are asked to determine whether a person licensed to practice dentistry in Wyoming¹ who has special training and experience in the field of general anesthesia, but is not a licensed physician in Wyoming² is authorized to practice general anesthesiology. We hold that appellant's dental license does not authorize the administration of anesthesia for nondental purposes. We affirm the trial court's order dismissing appellant's complaints, each seeking a declaratory judgment.

On March 28, 1984, appellant Russell F. Paravecchio, D.M.D., applied for an appointment of staff anesthesiologist with privileges appropriate to the full practice of anesthesiology from appellees, Memorial Hospital of Laramie County (Memorial), and DePaul Hospital (DePaul). The Department of Anesthesiology of Memorial and DePaul jointly reviewed appellant's credentials. Memorial's Executive Committee and also its Board of Trustees both denied appellant's application. Appellant requested and received a review of this denial, pursuant to Memorial's by-laws, before Memorial's Joint Hearing Committee. That committee affirmed the initial decisions denying appellant's application. DePaul's Medical Staff Executive Committee similarly denied appellant's request for anesthesiology privileges.

¹ Such a license issues pursuant to the Wyoming Dental Practice Act, consisting of §§ 33-15-101 through 33-15-128, W.S. 1977 (1986 Cum.Supp.).

² Such a license, issues pursuant to the Wyoming Medical Practice Act, consisting of §§ 33-26-101 through 33-26-152, W.S.1977 (1986 Cum. Supp.).

Appellant filed separate suits against Memorial and DePaul raising two general claims and seeking declaratory judgments for relief: (1) a declaration that Wyoming law currently authorizes a dentist who has successfully completed accredited anesthesiology residency training to legally and independently engage in the professional practice of clinical anesthesiology, and (2) a declaration that the denial of hospital privileges in anesthesiology by the appellee hospitals were impermissible. These complaints were amended on May 7, 1986. Both appellee hospitals filed counterclaims also seeking declaratory judgments that the practice of clinical anesthesiology is the practice of medicine as defined by § 33-26-101, W.S.1977, of the Wyoming Medical Practice Act, and that the hospitals acted properly in denying anesthesiology privileges to appellant.

Appellant filed motions to dismiss both of appellees' counterclaims and both appellees filed motions to dismiss appellant's amended complaints. Motions also were made by both appellees to join the Wyoming Board of Medical Examiners and solely by appellee Memorial to join the Wyoming Board of Dental Examiners as indispensable party defendants. A joint motion to consolidate the two cases was made by all three parties.³

After a hearing, the trial court ordered that appellant's amended complaints against Memorial and DePaul be dismissed with prejudice, pursuant to Rule 12(b)(6), Wyoming Rules of Civil Procedure, and that the motions made by both Memorial and DePaul to join the Wyoming Board of Medical Examiners as a party to litigation be denied. The effect of the order dismissing appellant's amended complaints was to deny the counterclaims of DePaul and Memorial, neither of which has appealed from that ruling. This appeal followed.

³ A formal order consolidating the two cases was not filed until January 13, 1987. After August 13, 1986, however, the two cases proceeded as consolidated.

Appellant raises one issue, essentially agreed to by appellees:

"May a documentably competent anesthesiologist practice the full clinical scope of anesthesiology in Wyoming if he or she is licensed by the state of Wyoming as a dentist and is not licensed by the state of Wyoming as a physician."

I

In his first argument, appellant asserts that the scope of dentistry as defined by the Wyoming Dental Practice Act is sufficiently broad to include those procedures necessary in the general practice of anesthesiology by a dentist. He then argues that the delivery of anesthesia may not be considered exclusive to the practice of medicine and therefore, may not be solely limited by the Wyoming Medical Practice Act. We cannot agree.

This case turns on a simple legal question: Does the appellant have the statutory authority in Wyoming to administer general nondental anesthesia under a dental license? Our answer must be based on settled principles of statutory construction. Appellant's extensive arguments regarding his qualifications to practice general anesthesiology are not relevant to this inquiry, and will not be considered.

When interpreting statutes, we must first look at the applicable statute itself giving the words employed by the legislature their plain and ordinary meaning in an attempt to construe legislative intent. *City of Evanston v. Robinson*, Wyo., 702 P.2d 1283 (1985). We also read statutes relating to the same subject together to effectuate legislative intent. *WYMO Fuels, Inc. v. Edwards*, Wyo., 723 P.2d 1230 (1986).

Wyoming statutes define the scope of authorized practice for the general field of medicine as well as many spe-

cialized areas of practice, including the field of dentistry.⁴ The Wyoming Dental Practice Act, § 33-15-114, W.S. 1977 (1986 Cum.Supp.) states in pertinent part:

"(a) Except as provided by paragraph (xii) of this subsection, *any person is deemed to be practicing dentistry within the meaning of this act:*

"(i) Who performs, or attempts, or advertises to perform, or causes to be performed by the patient or any other person, or instructs in the performance of any dental operation or *oral surgery* or dental service of any kind gratuitously or for a salary, fee, money or other remuneration paid, or to be paid, directly or indirectly, to himself or to any other person or agency;

⁴ Pursuant to W.S.1977 (1986 Cum.Supp.), the following represents a list of professional persons authorized to "practice medicine" under a license:

Podiatrists—§§ 33-9-101 to 33-9-113.

Chiropractors—§§ 33-10-101 to 33-10-117.

Dentists and Dental Hygienists—§§ 33-15-101 to 33-15-128.

Nurses—§§ 33-21-101 to 33-21-156.

Optometrists—§§ 33-23-101 to 33-23-116.

Pharmacists—§§ 33-24-101 to 33-24-151.

Physical Therapists—§§ 33-25-101 to 33-25-115.

Physicians and Surgeons—§§ 33-26-101 to 33-26-152.

Psychologists—§§ 33-27-101 to 33-27-112.

Veterinarians—§§ 33-30-101 to 33-30-215.

Speech Pathologists and Audiologists—§§ 33-33-101 to 33-33-309.

Clinical Laboratories and Blood Banks—§§ 33-34-101 to 33-34-109.

Hearing Aid Specialists—§§ 33-35-101 to 33-35-121.

Emergency Medical Services—§§ 33-36-101 to 33-36-113.

Radiologic Technologists—§§ 33-37-101 to 33-37-113.

- “(ii) Who is a manager, proprietor, operator or a conductor of a place where dental operations, *oral surgery* or dental services are performed;
- “(iii) Who directly or indirectly by any means or method furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, appliance or other structure to be worn in the *human mouth*, or places such appliance or structure in the *human mouth* or attempts to adjust the same;
- “(iv) Who advertises to the public by any method to furnish, supply, construct, reproduce or repair any prosthetic denture, bridge, appliance or other structure to be worn in the *human mouth*;
- “(v) Who diagnoses or professes to diagnose, prescribes for or professes to prescribe for, treats or professes to treat disease, pain, deformity, deficiency, injury to physical condition of *human teeth or jaws, or adjacent structure*;
- “(vi) Who extracts or attempts to extract *human teeth*, or corrects or professes to correct malpositions of *teeth or of the jaw*;
- “(vii) Who gives or professes to give interpretations or readings of dental roentgenograms;
- “(viii) *Who administers an anesthetic of any nature in connection with dental operations;*
- “(ix) Who uses the words ‘dentist’, ‘dental surgeon’ or ‘*oral surgeon*’, the letters ‘D.D.S.’, ‘D.M.D.’ or any other words, letters, title or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe or operate for any disease, pain, deformity,

deficiency, injury or physical condition of *human teeth or jaws, or adjacent structures*;

"(x) Who states or advertises or permits to be stated or advertised by a sign, card, circular, handbill, newspaper, radio or otherwise that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or

"(xi) Who engages in any of the practices included in the curriculum of an approved dental college;

"(xii) A dental laboratory or dental technician is not practicing dentistry within the meaning of this act when engaged in the construction, making, alteration or repairing of bridges, crowns, dentures or other prosthetic or surgical appliances, or orthodontic appliances if the casts or molds or impressions upon which the work is constructed have been made by a regularly licensed and practicing dentist, and if all crowns, bridges, dentures or prosthetic appliances, surgical appliances or orthodontic appliances are returned to the dentist upon whose order the work is constructed." (Emphasis added.)

In § 33-15-128, W.S.1977 (1986 Cum.Supp.), the act further states in pertinent part:

"(a) As used in this act:

* * * *

"(ii) '*Dentistry*' means the healing act practiced by a dentist which is concerned with the examination, diagnosis, treatment, planning and care of conditions *within the human oral cavity and its adjacent tissues and structures*;

"(iii) '*Dentist*' means a person who performs any *intraoral and extraoral* procedure required

in the practice of dentistry and to whom is reserved:

- “(A) The responsibility for final diagnosis of conditions within the *human mouth and its adjacent tissues and structures*;
- “(B) The responsibility of the final treatment plan of any dental patient;
- “(C) The responsibility for prescribing drugs which are administered to patients in the practice of dentistry;
- “(D) The responsibility for overall quality of patient care which is rendered or performed in the practice of dentistry regardless of whether the care is rendered personally by the dentist or by a dental auxiliary; and
- “(E) Other specific services within the scope of the practice of dentistry.

“(iv) ‘*Dental*’ means pertaining to dentistry.”
(Emphasis added.)

To find that the practice of general nondental anesthesiology is within the practice of dentistry would be to ignore obvious legislative intent as expressed in the Wyoming Dental Practice Act. We must not ignore clear statutory language and apply statutes to situations that do not reasonably fall within the intended ambit of such laws. Matter of Higgins, Wyo., No. 86-297, slip op. (Wyo., Jul. 2, 1987); Matter of Abas, Wyo., 701 P.2d 1153 (1985); Alco of Wyoming v. Baker, Wyo., 651 P.2d 266 (1982). Based on the plain and ordinary meaning of the words used in §§ 33-15-114 and 33-15-128, W.S. 1977 (1986 Cum.Supp.), the legislature clearly defined the practice of dentistry by restricting it to the diagnosis and treatment of the human mouth, teeth and jaw, or within the human oral cavity and its adjacent tissues and

structures. The legislature *explicitly* limited dental practice in the area of anesthesiology to that "anesthetic of any nature *in connection with dental operations.*" § 33-15-114(a)(viii). If appellant desires to practice general nondental anesthesiology he must obtain a license to practice medicine. He cannot do so under a dental license.

Appellant next contends that the general delivery of anesthesia is not exclusive to the practice of medicine as defined by the Wyoming Medical Practice Act, and is not necessarily limited by those provisions. Appellant argues that because § 33-26-101, W.S.1977,⁵ does not expressly encompass general anesthesiology in defining the practice of medicine, it does not limit the general anesthesiological activities appellant wants to practice. This, it is urged, obviates the requirement that appellant possess a medical license to practice general nondental anesthesiology under § 33-26-112, W.S.1977 (1986 Cum.Supp.).

We hold that the practice of general nondental anesthesia is squarely within the purviews of the Wyoming Medical Practice Act. Anesthesiology is defined in Stedman's Medical Dictionary (5th Unabridged Lawyer's Edition, 1982), as:

⁵ "Any person shall be regarded as practicing medicine, within the meaning of this act, who shall in any manner hold himself out to the public as being engaged within this state in the diagnosis and treatment of diseases or injuries or deformities of human beings; or who shall suggest, recommend or prescribe any form of treatment for the intended palliation, relief or cure of any physical or mental ailment of any person with the intention of receiving therefor, either directly or indirectly, any fee, gift or compensation whatsoever; or who shall maintain an office for the reception, examination and treatment of any person suffering from disease or injury of body or mind; or who shall attach the title of M.D., surgeon, doctor or any other word or abbreviation to his name indicative that such person is engaged in the practice of medicine as hereinafter defined."

"The *medical specialty* concerned with the pharmaceutical, physiological and clinical basis of anesthesia and related fields, including resuscitation, intensive respiratory care and pain." (Emphasis added.)

In the case of State v. Catellier, 63 Wyo. 123, 179 P.2d 203, 218-219 (1947), we stated:

"* * * [T]he cases as a whole indicate that the administration [of anesthetic] thereof is a part of the practice of medicine, and we think that that is the general understanding. The administration of an anesthetic in connection with the setting of the shoulder was, we think, part of the remedy applied by him. * * * In Joyner v. State, 181 Miss. 245, 179 So. 573, 575, 115 A.L.R. 954 [it was held that] in anesthetic (local, in that case) used by a chiropractor for compensation, in taking out a tonsil was in violation of the law prescribing the practice of medicine. So we think that in the case at bar the defendant violated the statute of this state which defines the practice of medicine, unless the shoulder was set and the anesthetic was given under the permissive condition contemplated in the statute."

While the Wyoming Medical Practice Act does not specifically provide for the inclusion of general anesthesiology, we believe the legislature intended that as long as specific statutes had not been enacted to cover narrowed areas of medicine, such areas are to be measured under the broad statutory scheme covering the general practice of medicine. In the case of Hahn v. State, 78 Wyo. 258, 269-271, 322 P.2d 896, 900-901 (1958), the appellant claimed that naturopathy was a distinct and nonmedical science. He claimed that he could not be found guilty under charges against him based on a "general medicine" statute, contentions similar to those espoused by appellant in this case. We stated:

"* * * [I]t would seem to be quite clear, and the authorities hold, that naturopathy is simply one of the methods of practicing medicine. For instance, it is stated in People v. Johnerson, Co.Ct., 49 N.Y.S. 2d 190, 196, 197, appeal dismissed, App.Div., 51 N.Y.S.2d 221, as follows:

"It has always been considered that the practice of medicine means and includes the practice of any of the so-called healing arts. *The Legislature, in enacting a broad and comprehensive statute, intended thereby to protect the members of the public from untrained, unskilled and inefficient practitioners in any healing art.* It is immaterial what method is used to effect a cure, or to relieve a person of pain. The true test is whether or not an attempt has been made by some manner or means to affect such cure or to relieve a person from some pain or ailment or physical condition complained of."

*** * * *

"It follows of course, and our statute is clear, that the practice of naturopathy cannot, as counsel for defendant contends it should, be regarded as a separate and distinct profession like that of dentistry for instance, *nor can we see any good reason why the legislature may not for the benefit of society require that those who practice the healing art should know and keep up with the improvements and advanced learning in that art.* The health and well-being of the members of society is too important to justify the failure to make requirements commensurate with the advancement of civilization. There is nothing to prohibit the practice of naturopathy provided that under our statute the practitioner has the learning of a physician and surgeon and has been admitted to practice as such in this state. Such a requirement is valid. * * *

"* * * May we ask, after all, why should not persons who hold themselves out to be doctors, regardless of what they may otherwise profess, be required to have the training of a medical doctor?"

"A like statement is found in *Davis v. Beeler*, [185 Tenn. 638, 207 S.W.2d 343 (1947), appeal dismissed 333 U.S. 859, 65 S.Ct. 145, 92 L.Ed. 1138 (1948)]. *It is true that the legislature has licensed dentists and chiropractors and other persons who in some manner attempt to exercise part of the healing art, but simply because the legislature made special regulations for these groups did not require it to make similar regulations concerning naturopaths.* It had perfect right to refuse to provide such regulations relating to them. [Citations.]" (Emphasis added.)

See also, *State v. Catellier*, *supra*.

Our interpretation that anesthesiology is to be considered the practice of medicine is further supported by other jurisdictions with statutory schemes similar to that of Wyoming. In *Spiro v. Highlands General Hospital*, Fla.App. 2 Dist., 489 So.2d 802, 803 (1986), appellant, a dentist, sought to practice general anesthesiology in a hospital setting. In rejecting appellant's argument the court stated:

"A dentist cannot practice the art of medicine without a medical license, despite a specific training in a field of medicine, anesthesiology in this case, which is, nevertheless, short of the required training necessary to obtain a medical license. The appellant does not have a medical license and, therefore, cannot practice anesthesia in a medical form."

See also *Everett v. State*, 99 Wash.2d 264, 661 P.2d 588 (1983), where the court held that anesthesia administered in connection with nondental surgery was a medical treatment requiring a medical license.

The anesthesiology desired to be practiced by appellant is nondental in nature. We hold that the restrictive language as used by the legislature in the Wyoming Dental Practice Art limits those licensed by that act to the practice of anesthesiology solely for purposes in connection with the oral cavity region. We also hold that the practice of general nondental anesthesiology is considered the practice of medicine as defined by the Wyoming Medical Practice Act. For appellant to legally practice in Wyoming, he must comply with the Wyoming Medical Practice Act. Appellant is not licensed to practice medicine in Wyoming under that act; consequently, appellees Memorial and DePaul could not legally staff appellant as an anesthesiologist.

II

In appellant's second argument, he contends that any denial of the right to practice clinical general anesthesiology by individuals component to practice that endeavor for the lack of a physician's license constitutes a violation of the Equal Protection clause of the Fourteenth Amendment to the United States Constitution and the Wyoming State Constitution. Appellant asserts that he is the equal of a licensed physician anesthesiologist because he has been declared a qualified anesthesiologist by an accredited residency program. He claims that this denies him equal protection under the law because he cannot practice the same as licensed physician anesthesiologists.

The Fourteenth Amendment to the Constitution of the United States of America provides:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

Art. 1, § 34 of the Constitution of the State of Wyoming provides:

"All laws of a general nature shall have a uniform operation."

When dealing with this aspect of appellant's argument we must first differentiate between two equal protection tests. We recently stated in *Baskin v. State ex rel. Worker's Compensation Division*, Wyo., 722 P.2d 151, 155-156 (1986) :

"* * * According to one test if a fundamental interest is involved the court must apply a standard of strict scrutiny, that is the statutory classification must be necessary to achieve a compelling state interest and there must be no less intrusive alternative means available. *Washakie County School District No. One v. Herschler*, Wyo., 606 P.2d 310, cert. denied sub nom. *Hot Springs County School District Number 1 v. Washakie County School District Number 1*, 449 U.S. 824, 101 S.Ct. 86, 66 L.Ed.2d 28 (1980). If an ordinary interest is involved, however, the classification is only required to bear a rational relationship to a legitimate state objective.* * * *"

Under equal protection analysis this case presents no previously recognized suspect, "near" suspect, or invidiously discriminatory classification and since it does not involve a recognized fundamental or "quasi" fundamental right. The proper standard of review is the rational basis test. *Baskin v. State ex rel. Worker's Compensation Division*, supra; and *O'Brien v. State*, Wyo., 711 P.2d 114 (1986).

Under this standard of review the challenged statutes are presumed constitutional and appellant carries the

heavy burden of proving them unconstitutional by clear and exact proof beyond a reasonable doubt. This burden is heavy because we will assume any conceivable state of facts that can reasonably sustain the challenged statutory classification as having existed when the statute was passed. *Baskin v. State ex rel. Worker's Compensation Division*, *supra*. A classification is not infirm, even though imperfect, if it has some reasonable distinction from other subjects of a like general character, which distinction bears some reasonable relation to the legitimate objectives and purposes of the legislation. See *Vance v. Bradley*, 400 U.S. 93, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979); and *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970).

Appellant argues that the distinction between a licensed physician general anesthesiologist and others educated in anesthesiology lacks a reasonable relationship to any legitimate state interest. This argument is specious. The state has an obvious legitimate interest in insuring that persons practicing general medicine be licensed in the interest of the health, safety and welfare of its citizens. The right to practice medicine is a property right, but it is a conditional right, subject to the police power of the state. *State v. Hoffman*, Utah, 733 P.2d 502 (1987); *Dandridge v. Williams*, *supra*; *Dent v. West*, Va., 129 U.S. 114, 9 S.Ct. 231, 32 L.Ed. 623 (1889). In *Dent v. West*, *supra*, it was said that every person may follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex, and condition. The power of the state to provide for the general welfare of its people authorizes it to prescribe such regulation as in its judgment will secure or tend to secure the people against the consequences of ignorance and incapacity as well as health and safety. No offense was dealt the Equal Protection clause of the United States Constitution or the Wyoming State Constitution.

by requiring that general nondental anesthesiologists be properly licensed as physicians under the Wyoming Medical Practice Act.

We conclude by recognizing that when reviewing Rule 12(b)(6), W.R.C.P., dismissal cases, we apply the standard of review recently set out in *Mostert v. CBL & Associates and American Multi-Cinema, Inc., Wyo.*, No. 86-220, slip op. at 3-4 (Wyo., Aug. 14, 1987):

"According to our standard of review we will sustain a dismissal of a complaint only if it shows on its face that the plaintiff was not entitled to relief under any set of facts. *Johnson v. Aetna Casualty & Surety Co. of Hartford, Wyo.*, 608 P.2d 1299 (1980). In considering such a motion, the 'facts alleged in the complaint are admitted and that allegations must be viewed in the light most favorable to plaintiffs.' *Moxley v. Laramie Builders, Inc., Wyo.*, 600 P.2d 733, 734 (1979). Dismissal is a drastic remedy, and is sparingly granted. *Harris v. Grizzle, Wyo.*, 599 P.2d 580, 583 (1979). In *Lewis v. State Board of Control, Wyo.*, 699 P.2d 822, 824 (1985), we said:

"* * * In reviewing a dismissal under Rule 12(b)(6) [W.R.C.P.], this court will only sustain such dismissal if the complaint shows on its face that the plaintiff is not entitled to relief. *Johnson v. Aetna Casualty and Surety Co. of Hartford, Conn., Wyo.*, 608 P.2d 1299 (1980), appeal after remand 630 P.2d 514, cert. denied 454 U.S. 1118, 102 S.Ct. 961, 71 L.Ed.2d 105 (1981), reh. denied 455 U.S. 1039, 102 S.Ct. 1743, 72 L.Ed.2d 157 (1982). Therefore, we treat as true all the allegations of contestants' complaint. *Moxley v. Laramie Builders, Inc., Wyo.*, 600 P.2d 733 (1979)."

The instant dismissal was proper under this standard. Affirmed in all respects.

IN THE SUPREME COURT
STATE OF WYOMING
OCTOBER TERM, A.D. 1987

No. 87-22

RUSSELL F. PARAVECCHIO, D.M.D.,
Appellant (Plaintiff),

v.

MEMORIAL HOSPITAL OF LARAMIE
COUNTY and DEPAUL HOSPITAL,
Appellees (Defendants).

[Filed Oct. 7, 1987]

ORDER DENYING PETITION FOR REHEARING

This case came on before the court upon the Petition for Rehearing and Brief in Support of Petition for Rehearing, filed herein on behalf of appellant, Russell F. Paravecchio, D.M.D., October 2, 1987, and the court having reviewed the file, the record, the opinion of the court, the Petition for Rehearing and Brief in Support of Petition for Rehearing, and having carefully considered the matters presented therein, finds that the Petition for Rehearing should be denied, and it therefore is

ORDERED that the Petition for Rehearing, be, and the same hereby is, denied.

Dated October 7th, 1987.

BY THE COURT*

/s/ C. Stuart Brown
C. STUART BROWN
Chief Justice

* URBIGKIT, J., would have granted the Petition for Rehearing.

MANDATE ON AFFIRMANCE

IN THE SUPREME COURT OF THE STATE OF WYOMING

[Filed Oct. 7, 1987]

To the Honorable the District Court of the County of Laramie,

WHEREAS, Russell F. Paravecchio, D.M.D., on the 16th day of January, A.D. 1987, filed a record on appeal in the Supreme Court of the State of Wyoming to obtain the reversal of a judgment rendered by you on the 3rd day of December, A.D. 1986, and entered on the 5th day of December, A.D. 1986, in a cause pending before you wherein Russell F. Paravecchio, D.M.D. was plaintiff and Memorial Hospital of Laramie County and DePaul Hospital were defendants, and

WHEREAS, The following proceedings were had and entered in the Supreme Court in said cause on the 17th day of September, A.D. 1987, to wit:

"This cause having been heretofore taken under advisement, the court, being now fully apprised in the matter, does say and find there is no reversible error in the record of the proceedings of the District Court of Laramie County.

"It is therefore ordered and adjudged for the reasons stated in the opinion herein this day delivered and filed that the judgment of the said district court be, and the same is hereby, affirmed.

"It is further ordered that the costs of this appeal be taxed against the appellant."

Now, THEREFORE, You are commanded without delay to carry into execution and effect the judgment so as aforesaid rendered by you, in the manner provided by law.

WITNESS, The Honorable C. Stuart Brown, Chief Justice of said Supreme Court, and the Seal thereof, at Cheyenne this 8th day of October, A.D. 1987.

[SEAL]

JEAN A WOODS
Clerk

by /s/ Leslie Arnold
Deputy Clerk

**THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF WYOMING
IN AND FOR LARAMIE COUNTY**

Docket 110, No. 248

RUSSELL F. PARAVECCHIO, D.M.D.,
Plaintiff,
vs.

MEMORIAL HOSPITAL OF LARAMIE COUNTY,
Defendant.

[Filed May 7, 1986]

**AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff Russell F. Paravecchio, D.M.D. (hereinafter "Dr. Paravecchio") for his Amended Complaint states and alleges as follows:

FACTS COMMON TO ALL CLAIMS FOR RELIEF

1. Dr. Paravecchio is an individual residing at and domiciled in Cheyenne, Laramie County, Wyoming.
2. Defendant Memorial Hospital of Laramie County (hereinafter referred to as "Memorial" or as "Defendant Memorial") at all times alleged herein was a publicly owned hospital with its principal place of business in Cheyenne, Laramie County, Wyoming. Defendant Memorial is licensed for the purpose of providing health care services to the public. It is regulated and controlled by the State of Wyoming, including the operation and dis-

position of such matters as the granting, suspension and revocation of medical staff privileges pursuant to state statutes and the reporting of same to Wyoming state agencies. It is operated by an elected Board of Trustees and is supported by public monies with the exception of direct patient fees.

3. Jurisdiction in this Court exists pursuant to the Uniform Declaratory Judgments Act, W.S. § 1-37-102 (1977).

4. Pursuit of this declaratory judgment action is not in derogation of Dr. Paravecchio's right to seek further relief based upon such declaratory judgment pursuant to W.S. § 1-37-110 (1977).

5. There exists a justiciable controversy between Dr. Paravecchio and Defendant Memorial with regard to certain contentions and actions of Defendant Memorial as described hereinafter, and Dr. Paravecchio has an interest with regard to such contentions and actions sufficient to allow him standing to obtain a declaration of his rights with regard thereto, and this Court has jurisdiction over the claims set forth hereinafter.

6. On or about 28 March 1984, Dr. Paravecchio submitted to Defendant Memorial an Application For Appointment To Medical Staff requesting therein privileges to practice as a staff anesthesiologist with privileges appropriate to the practice of anesthesiology. A copy of said Application For Appointment To Medical Staff is attached hereto as Exhibit "A."

7. On or about 14 May 1984, the "Credentials Committee" of Defendant Memorial took action to accept Dr. Paravecchio's credentials for staff membership, but deferred to the "Executive Committee" of Defendant Memorial the question of determination of the department and staff division to which he should be assigned. A copy of the Minutes of said meeting is attached hereto as Exhibit "B."

8. On or about 4 June 1984, a joint meeting of the Departments of Anesthesiology of Defendant Memorial and of DePaul Hospital was conducted, during which Dr. Paravecchio's Application For Appointment To Medical Staff and the Minutes of the "Credentials Committee" were reviewed. A copy of the Minutes of said joint meeting of the Departments of Anesthesiology of Defendant Memorial and DePaul Hospital is attached hereto as Exhibit "C."

9. On or about 25 June 1984, Defendant Memorial's Executive Committee took action not to accept Dr. Paravecchio's Application For Appointment To Medical Staff. A copy of the Minutes of said action of Defendant Memorial's Executive Committee is attached hereto as Exhibit "D."

10. On or about 2 July 1984, Defendant Memorial's Department of Anesthesiology held a meeting at which the actions of the 25 June 1984 Executive Committee meeting were acknowledged. A copy of the Minutes of the 2 July 1984 meeting of Defendant Memorial's Department of Anesthesiology is attached hereto as Exhibit "E."

11. On or about 11 July 1984, the Board of Trustees of Defendant Memorial met and accepted the recommendation of Defendant Memorial's Executive Committee and Defendant Memorial's Department of Anesthesiology to deny Dr. Paravecchio's Application For Appointment To Medical Staff. A copy of an excerpt from the Minutes of said 11 July 1984 meeting of Defendant Memorial's Board of Trustees is attached hereto as Exhibit "F."

12. On or about 7 August 1984, the President of the Medical Staff of Defendant Memorial, by written correspondence, advised Dr. Paravecchio of Defendant Memorial's decision to deny his Application For Appointment To Medical Staff. A copy of said letter of 7 August 1984 from the President of Defendant Memorial's Medical Staff to Dr. Paravecchio is attached hereto as Exhibit "G."

13. Thereafter, pursuant to the By-Laws of Defendant Memorial, Dr. Paravecchio, by letter dated 18 September 1984 requested review of said denial of privileges by Defendant Memorial's Joint Hearing Committee. A copy of said 18 September 1984 letter from Dr. Paravecchio to the President of Defendant Memorial's Medical Staff is attached hereto as Exhibit "H."

14. On 22 October 1984, a hearing was held by the Defendant Memorial's Joint Hearing Committee for the purpose of reviewing the denial of Dr. Paravecchio's Application For Appointment To Medical Staff. A copy of the transcript of said 22 October 1984 hearing of Defendant Memorial's Joint Hearing Committee is attached hereto as Exhibit "I."

15. On or about 29 October 1984, Reed C. Shafer, M.D., President of Defendant Memorial's Medical Staff and Chairman of the Joint Hearing Committee which was convened on 22 October 1984, by written correspondence addressed to Mr. Auburn Dowdy, President of the Board of Trustees of Defendant Memorial, advised of the decision of Defendant Memorial's Joint Hearing Committee to approve prior denials and continue denial of Dr. Paravecchio's Application For Appointment To Medical Staff. A copy of said 29 October 1984 letter from Reed C. Shafer, M.D. to Mr. Auburn Dowdy is attached hereto as Exhibit "J."

16. On 19 November 1984, Dr. Paravecchio timely appealed the finding of Defendant Memorial's Joint Hearing Committee as detailed in the 29 October 1984 letter of Reed C. Shafer, M.D. A copy of said 19 November 1984 Notice of Appeal is attached hereto as Exhibit "K."

17. By agreement between Dr. Paravecchio and Defendant Memorial, a hearing by Defendant Memorial's Board of Trustees upon Dr. Paravecchio's 19 November 1984 Notice of Appeal (a copy of which is attached

hereto as Exhibit "K") has been suspended and will not be held pending a determination upon the claims of Dr. Paravecchio as set forth hereinafter.

18. Dr. Paravecchio is qualified to practice the clinical scope of anesthesiology for the following reasons:

a. Dr. Paravecchio holds a Certificate of Residency in Anesthesiology, which was duly issued to Dr. Paravecchio by the University of Oregon Health Science Center after his completion of a two year residency in anesthesiology from an accredited institution.

b. Dr. Paravecchio has enjoyed privileges as a staff anesthesiologist with the United States Army and with the Veterans Administration Hospital located in Cheyenne, Wyoming.

c. Dr. Paravecchio has been adequately trained in, and possesses the necessary skills and knowledge, and is competent to independently practice, clinical anesthesiology.

19. Any physician or dentist holding a doctorate degree and a state license to diagnose, treat and prescribe medication for human patients, and who holds a certificate attesting to the completion of a residency program in anesthesiology from an accredited institution, has been adequately trained and is competent to independently engage in the professional practice of anesthesiology.

20. Within the range of individual capabilities, and further, within the range of educational backgrounds, be they foreign, domestic, or otherwise, which a candidate may present as acceptable for admission to an accredited anesthesiology residency program, the resident must learn, acquire, and/or ultimately possess the skills, knowledge, psycho-motor dexterity, and general competency to practice clinical anesthesiology before a certificate of residency in said speciality can be conferred. The conferring of a certificate of completion of the accredited

anesthesiology specialty residency is therefore the only and final evidence necessary as proof of such competency by the conferring institution.

21. Dentists have been trained side by side with physicians in accredited anesthesiology residencies to perform the same functions upon completion.

22. There exist areas of practice which are congruent to the legal practice of both medicine and dentistry, and within the evolution of these professions there exist mechanisms to define these and future areas of overlap. History has shown that the evolution of these professions has involved ever-increasing areas of recognized overlap.

23. Dr. Paravecchio is licensed by the state of Wyoming to practice dentistry and meets the requirements necessary ". . . to use general anesthesia in his office . . ." and in satellite offices. The rules and regulations of the Wyoming Board of Dental Examiners governing a dentist's practice in his office or satellite office also must apply to govern his practice within a hospital as a satellite office.

24. Dr. Paravecchio does not hold an M.D. degree, but rather holds a D.M.D. degree, and is not licensed as a physician by the Wyoming Board of Medical Examiners, but is licensed as a dentist by the Wyoming Board of Dental Examiners. The Wyoming Board of Medical Examiners has acknowledged to Dr. Paravecchio, by written communication dated 3 April 1984, that it is not the province of the Wyoming Board of Medical Examiners to determine the scope of Dr. Paravecchio's license to practice as issued by the Wyoming Board of Dental Examiners. A copy of said letter of 3 April 1984 is attached hereto as Exhibit "L." The Wyoming Board of Dental Examiners has acknowledged to Dr. Paravecchio, by written communication dated 12 June 1985, that:

. . . a dentist anesthesiologist, being so trained, can practice, within the scope of the dental license, the

full range of in-hospital as well as in-office anesthesiology services in lieu of any procedure and as such is not limited to the administration of anesthesia for dental procedures.

A copy of said letter of 12 June 1985 is attached hereto as Exhibit "M."

25. During the period following the application for appointment to medical staff submitted to Defendant Memorial by Dr. Paravecchio, anesthesiology services have been provided to Defendant Memorial by anesthesiologists who are licensed physicians.

26. It has been publicly indicated that instances have occurred and will continue to occur for which additional anesthesiology coverage is needed in this community.

**FIRST CLAIM FOR RELIEF—DECLARATORY
JUDGMENT (LICENSING)**

27. The position of Defendant Memorial described above with regard to Dr. Paravecchio's lack of an M.D. degree and lack of physician's license issued through the Wyoming Board of Medical Examiners is contrary to the provisions of Wyoming law and the Wyoming Dental Practice Act.

28. Defendant Memorial's interpretation of Wyoming law is erroneous, and/or any provision of Wyoming law supporting the position of Defendant Memorial is in violation of Article I, §§ 6 and 34 of the Constitution of the State of Wyoming, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

29. The question of law presented by the position taken by Defendant Memorial is of substantial public moment.

30. An individual residing in the State of Wyoming and possessing the education and recognized residency

training and licensing alleged herein to be possessed by Dr. Paravecchio is authorized by law to practice clinical anesthesiology in Wyoming, and this Court should enter its judgment so declaring.

31. A declaration by this Court as to the issue described in § 30 above will resolve the question of the rights of Dr. Paravecchio vis-a-vis Defendant Memorial, and a justiciable controversy exists between Dr. Paravecchio and Defendant Memorial.

32. This Court should enter judgment declaring that Dr. Paravecchio by virtue of his training and his licensing by the Wyoming Board of Dental Examiners is qualified legally to practice clinical anesthesiology in Wyoming.

SECOND CLAIM FOR RELIEF—DECLARATORY JUDGMENT (PRIVILEGES)

33. The actions and positions of Defendant Memorial described above, and particularly as detailed in Exhibit "J," are contrary to the provisions of Wyoming law, including but not limited to, the requirements of W.S. § 35-2-113 that hospital privileges be granted to applicants based upon competency and character rather than upon the education degree possessed by the applicant.

34. This Court should enter judgment declaring that Dr. Paravecchio by virtue of his background, education, recognized residency training and his licensing by the Wyoming Board of Dental Examiners is qualified to practice clinical anesthesiology, and that Defendant Memorial is obligated to accept Dr. Paravecchio's Application For Appointment To Medical Staff as submitted on 28 March 1984.

WHEREFORE, Plaintiff Dr. Paravecchio prays for judgment as follows:

A. For judgment declaring that Plaintiff is duly qualified and licensed to practice clinical anesthesiology in Wyoming.

B. For judgment declaring findings and conclusions of Exhibit "J" to be erroneous or insufficient under Wyoming law to deny hospital privileges to Dr. Paravecchio and that Defendant Memorial is required to grant the Application For Appointment To Medical Staff of Dr. Paravecchio with privileges in anesthesiology.

C. For such other and further relief as this Court may deem appropriate.

DATED: May 7, 1986.

/s/ Russell F. Paravecchio
RUSSELL F. PARAVECCHIO

BY: /s/ Thomas N. Long
OF HIRST & APPLEGATE
Attorney for Plaintiff
200 Boyd Building
P.O. Box 1083
Cheyenne, Wyoming 82003-1083
T: (307) 632-0541

STATE OF WYOMING)
) ss
COUNTY OF LARAMIE)

Russell F. Paravecchio, D.M.D., being first duly sworn, upon oath, deposes and says as follows, that he is the Plaintiff named in the foregoing Amended Complaint For Declaratory Judgment that he has read the statements and allegations contained therein; that he reasonably believes all of the same to be true.

/s/ Russell F. Paravecchio
RUSSELL F. PARAVECCHIO

Subscribed, sworn to and acknowledged before me by Russell F. Paravecchio, this 7 day of May, 1986. Witness my hand and official seal. My commission expires: 5/4/89.

**/s/ Thomas N. Long
Notary Public**

CERTIFICATE OF SERVICE

I certify that the foregoing Amended Complaint For Declaratory Judgment was served upon all parties to this action pursuant to the Wyoming Rules of Civil Procedure on 7 May 1986, and that copies were mailed to: Dray, Madison & Thomson; Carmichael, McNiff & Patton; Wyoming Attorney General.

**/s/ Thomas N. Long
OF HIRST & APPLEGATE
Attorneys for Plaintiff
200 Boyd Building
P.O. Box 1083
Cheyenne, Wyoming 82003-1083**

THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF WYOMING
IN AND FOR LARAMIE COUNTY

Docket 110, No. 249

RUSSELL F. PARAVECCHIO, D.M.D.,
Plaintiff,
vs.

DEPAUL HOSPITAL,
Defendant.

[Filed May 7, 1986]

AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT

Plaintiff Russell F. Paravecchio, D.M.D. (hereinafter "Dr. Paravecchio") for his Amended Complaint states and alleges as follows:

FACTS COMMON TO ALL CLAIMS FOR RELIEF

1. Dr. Paravecchio is an individual residing at and domiciled in Cheyenne, Laramie County, Wyoming.
2. Defendant DePaul Hospital (hereinafter referred to as "DePaul" or as "Defendant DePaul") at all times alleged herein was a privately owned hospital with its principal place of business in Cheyenne, Laramie County, Wyoming. Defendant DePaul is licensed for the purpose of providing health care services to the public. It is regulated and controlled by the State of Wyoming, including the operation and disposition of such matters as the

granting, suspension and revocation of medical staff privileges pursuant to state statutes and the reporting of same to Wyoming state agencies. It is operated by the Sisters of Charity of Leavenworth, a non-profit organization affiliated with the Catholic church, and is not supported by public moneys.

3. Jurisdiction in this Court exists pursuant to the Uniform Declaratory Judgments Act, W.S. § 1-37-102 (1977).

4. Pursuit of this declaratory judgment action is not in derogation of Dr. Paravecchio's right to seek further relief based upon such declaratory judgment pursuant to W.S. § 1-37-110 (1977).

5. There exists a justiciable controversy between Dr. Paravecchio and Defendant DePaul with regard to certain contentions and actions of Defendant DePaul as described hereinafter, and Dr. Paravecchio has an interest with regard to such contentions and actions sufficient to allow him standing to obtain a declaration of his rights with regard thereto, and this Court has jurisdiction over the claims set forth hereinafter.

6. On or about 28 March 1984, Dr. Paravecchio submitted to Defendant DePaul an Application For Appointment to Medical Staff requesting therein privileges to practice as a staff anesthesiologist with privileges appropriate to the practice of anesthesiology.

7. On or about 4 June 1984, a joint meeting of the Departments of Anesthesiology of Defendant DePaul and of Memorial Hospital of Laramie County was conducted, during which Dr. Paravecchio's Application For Appointment to Medical Staff was reviewed. A copy of the relevant portion of the Minutes of said joint meeting of the Departments of Anesthesiology of Defendant DePaul and Memorial Hospital of Laramie County is attached hereto as Exhibit "A."

8. On 13 August 1984, the Medical Staff Executive Committee of DePaul Hospital met and unanimously recommended to the Board of Directors that Dr. Paravecchio's request for anesthesiology privileges be denied as initially recommend by the DePaul Department of Anesthesiology on 4 June 1984. A copy of the relevant portion of said Minutes of the Medical Staff Executive Committee is attached hereto as Exhibit "B."

9. On 15 August 1984, the Executive Committee of the Board of Directors of DePaul Hospital met and considered further the Application of Dr. Paravecchio, and requested further information concerning the matter, and tabled the matter until its September meeting. A copy of the relevant portion of said Minutes of the 15 August 1984 meeting of the Executive Committee of the Board of Directors of DePaul Hospital is attached hereto as Exhibit "C."

10. On 19 September 1984 the Executive Committee of the Board of Directors of DePaul Hospital met to consider further the Application of Dr. Paravecchio, and unanimously approved the recommendation by the Medical Staff Executive Committee that Dr. Paravecchio's request for anesthesiology privileges be denied. A copy of the relevant portion of the Minutes of the 19 September 1984 meeting of the Executive Committee of the Board of Directors of Defendant DePaul is attached hereto as Exhibit "D."

11. On 19 December 1984, the Executive Committee of DePaul Hospital met to consider the request of Dr. Paravecchio for a hearing upon the 19 September 1984 denial of his request for privileges in anesthesiology. At said 19 December 1984 meeting it was reported that a hearing committee was in the process of being designated and that a hearing would be held after the end of calendar year 1984. A copy of the relevant portions of the Minutes of the meeting of 19 December 1984 of the Ex-

ecutive Committee of the Board of Directors of Defendant DePaul is attached hereto as Exhibit "E."

12. On 15 January 1985 the Board of Directors of Defendant DePaul held its quarterly meeting and reported that a committee had been appointed but that Dr. Paravecchio had recently requested Defendant DePaul not to set a hearing date until a declaratory judgment could be entered with regard to proceedings initiated by Dr. Paravecchio with Memorial Hospital of Laramie County. A copy of the relevant portions of the Minutes of the 15 January 1985 quarterly meeting of the Board of Directors of Defendant DePaul is attached hereto as Exhibit "F."

13. No further action has been taken by DePaul nor is any contemplated until a resolution of at least the issue presented in the first cause of action has been reached by the declaration of this Court.

14. On 22 October 1984, a hearing was held by the Defendant Memorial's Joint Hearing Committee for the purpose of reviewing the denial of Dr. Paravecchio's Application For Appointment To Medical Staff. Dr. Douglas B. McMullen, Chief of Anesthesiology as Defendant DePaul was in attendance.

15. Dr. Paravecchio is qualified to practice clinical anesthesiology for the following reasons:

a. Dr. Paravecchio holds a Certificate of Residency in Anesthesiology, which was duly issued to Dr. Paravecchio after his completion of a two year residency in anesthesiology from an accredited institution.

b. Dr. Paravecchio has enjoyed privileges as a staff anesthesiologist with the United States Army and with the Veterans Administration Hospital located in Cheyenne, Wyoming.

- c. Dr. Paravecchio has been adequately trained in, and possesses the necessary skills and knowledge, and is competent to independently practice, clinical anesthesiology.
- 16. Any physician or dentist holding a doctorate degree and a state license to diagnose, treat and prescribe medication for human patients, and who holds a certificate attesting to the completion of a residency program in anesthesiology from an accredited institution, has been adequately trained and is competent to independently engage in the professional practice of anesthesiology.
- 17. Within the range of individual capabilities, and further, within the range of educational backgrounds, be they foreign, domestic, or otherwise, which a candidate may present as acceptable for admission to an accredited anesthesiology residency program, the resident must learn, acquire, and/or ultimately possess the skills, knowledge, psycho-motor dexterity, and general competency to practice clinical anesthesiology before a certificate of residency in said speciality can be conferred. The conferring of a certificate of completion of the accredited anesthesiology specialty residency is therefore the only and final evidence necessary as proof of such competency by the conferring institution.
- 18. Dentists have been trained side by side with physicians in accredited anesthesiology residencies to perform the same functions upon completion.
- 19. There exist areas of practice which are congruent to the legal practice of both medicine and dentistry, and within the evolution of these professions there exist mechanisms to define these and future areas of overlap. History has shown that the evolution of these professions has involved ever-increasing areas of recognized overlap.
- 20. Dr. Paravecchio is licensed by the state of Wyoming to practice dentistry and meets the requirements

necessary ". . . to use general anesthesia in his office . . ." and in satellite offices. The rules and regulations of the Wyoming Board of Dental Examiners governing a dentist's practice in his office or satellite office also must apply to govern his practice within a hospital as a satellite office.

21. Dr. Paravecchio does not hold an M.D. degree, but rather holds a D.M.D. degree, and is not licensed as a physician by the Wyoming Board of Medical Examiners, but is licensed as a dentist by the Wyoming Board of Dental Examiners. The Wyoming Board of Medical Examiners has acknowledged to Dr. Paravecchio, by written communication dated 3 April 1984, that it is not the province of the Wyoming Board of Medical Examiners to determine the scope of Dr. Paravecchio's license to practice as issued by the Wyoming Board of Dental Examiners. A copy of said letter of 3 April 1984 is attached hereto as Exhibit "G." The Wyoming Board of Dental Examiners has acknowledged to Dr. Paravecchio, by written communication dated 12 June 1985, that:

. . . a dentist anesthesiologist, being so trained, can practice, within the scope of the dental license, the full range of in-hospital as well as in-office anesthesiology services in lieu of any administration of anesthesia for dental procedures.

A copy of said letter of 12 June 1985 is attached hereto as Exhibit "H."

22. During the period following the application for appointment to medical staff submitted to Defendant DePaul by Dr. Paravecchio, anesthesiology services have been provided to Defendant DePaul by anesthesiologists who are licensed physicians.

23. It has been publicly indicated that instances have occurred and will continue to occur for which additional anesthesiology coverage is needed in this community.

FIRST CLAIM FOR RELIEF—DECLARATORY
JUDGMENT (LICENSING)

24. The position of Defendant DePaul described above with regard to Dr. Paravecchio's lack of an M.D. degree and lack of physician's license issued through the Wyoming Board of Medical Examiners is contrary to the provisions of Wyoming law and the Wyoming Dental Practice Act.

25. Defendant DePaul's interpretation of Wyoming law is erroneous, and/or any provision of Wyoming law supporting the position of Defendant DePaul is in violation of Article I, §§ 6 and 34 of the Constitution of the State of Wyoming, and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

26. The question of law presented by the position taken by Defendant DePaul is of substantial public moment.

27. An individual residing in the State of Wyoming and possessing the education and recognized residency training and licensing alleged herein to be possessed by Dr. Paravecchio is authorized by law to practice clinical anesthesiology in Wyoming, and this Court should enter its judgment so declaring.

28. A Declaration by this Court as to the issue described in ¶ 27 above will resolve the question of the rights of Dr. Paravecchio vis-a-vis Defendant DePaul, and a justiciable controversy exists between Dr. Paravecchio and Defendant DePaul.

29. This Court should enter judgment declaring that Dr. Paravecchio by virtue of his training and his licensing by the Wyoming Board of Dental Examiners is qualified to legally practice clinical anesthesiology in Wyoming.

**SECOND CLAIM FOR RELIEF—DECLARATORY
JUDGMENT (PRIVILEGES)**

30. The actions and positions of Defendant DePaul described above are contrary to the provisions of Wyoming law, including but not limited to, the requirements of W.S. § 35-2-113 that hospital privileges be granted to applicants based upon competency and character rather than upon the educational degree possessed by the applicant.

31. This Court should enter judgment declaring that Dr. Paravecchio by virtue of his background, education, recognized residency training and his licensing by the Wyoming Board of Dental Examiners is qualified to practice clinical anesthesiology, and that Defendant DePaul is obligated to accept Dr. Paravecchio's Application For Appointment To Medical Staff as submitted on 28 March 1984.

WHEREFORE, Plaintiff Dr. Paravecchio prays for judgment as follows:

A. For judgment declaring that Plaintiff is duly qualified and licensed to practice clinical anesthesiology in Wyoming.

B. For judgment declaring that Defendant DePaul is required to grant the Application For Appointment to Medical Staff of Dr. Paravecchio.

C. For such other and further relief as this Court may deem appropriate.

DATED: May 7, 1986.

/s/ Russell F. Paravecchio
RUSSELL F. PARAVECCHIO

By: /s/ Thomas N. Long
OF HIRST & APPLEGATE
Attorney for Plaintiff
200 Boyd Building
P.O. Box 1083
Cheyenne, Wyoming 82003-1083
T: (307) 632-0541

STATE OF WYOMING)
) ss
COUNTY OF LARAMIE)

Russell F. Paravecchio, D.M.D., being first duly sworn,
upon oath, deposes and says as follows, that he is the
Plaintiff named in the foregoing Amended Complaint For
Declaratory Judgment that he has read the statements
and allegations contained therein; that he reasonably
believes all of the same to be true.

/s/ Russell F. Paravecchio
RUSSELL F. PARAVECCHIO

Subscribed, sworn to and acknowledged before me by
Russell F. Paravecchio, this 7 day of May, 1986. Witness
my hand and official seal. My commission expires:
5/4/89.

/s/ Thomas N. Long
Notary Public

CERTIFICATE OF SERVICE

I certify that the foregoing Amended Complaint For Declaratory Judgment was served upon all parties to this action pursuant to the Wyoming Rules of Civil Procedure on 7 May 1986, and that copies were mailed to: Dray, Madison & Thomson; Carmichael, McNiff & Patton; Wyoming Attorney General.

/s/ Thomas N. Long
OF HIRST & APPLEGATE
Attorneys for Plaintiff
200 Boyd Building
P.O. Box 1083
Cheyenne, Wyoming 82003-1083

FEB 8 1988

JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

RUSSELL F. PARAVECCHIO, D.M.D.,
Petitioner,
v.

MEMORIAL HOSPITAL OF LARAMIE COUNTY,

AND

DEPAUL HOSPITAL,
Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Wyoming

RESPONDENTS' JOINT BRIEF IN OPPOSITION

W. PERRY DRAY *
GREGORY C. DYEKMAN
DRAY, MADISON & THOMPSON, P.C.
204 East 22nd Street
Cheyenne, Wyoming 82003-3799
(307) 634-8891
*Counsel for Memorial Hospital
of Laramie County*

DAVID H. CARMICHAEL *
CARMICHAEL, McNIFF & PATTON
1920 Thomes Avenue, Suite 600
P.O. Box 945
Cheyenne, Wyoming 82003-0945
(307) 635-4111
Counsel for DePaul Hospital

* Counsel of Record



QUESTION PRESENTED

Does the Fourteenth Amendment of the United States Constitution prohibit a state law which requires possession of a medical license by one who seeks to practice as an unsupervised anesthesiologist for non-dental procedures?*

* The parties to this proceeding are Russell F. Paravecchio, D.M.D., Petitioner, and Memorial Hospital of Laramie County and DePaul Hospital, Respondents.

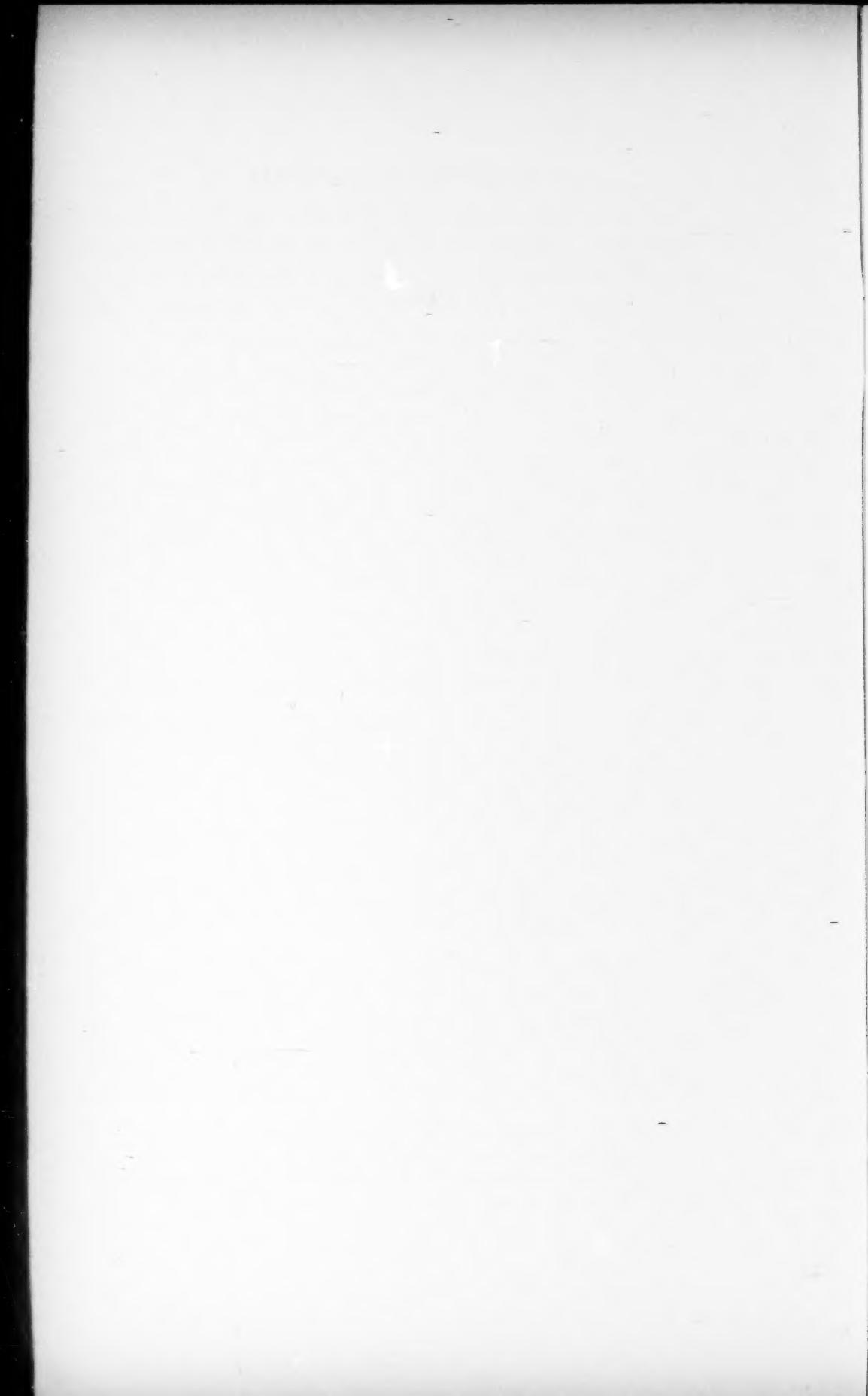


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IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

No. 87-1119

RUSSELL F. PARAVECCHIO, D.M.D.,
Petitioner,
v.

MEMORIAL HOSPITAL OF LARAMIE COUNTY,
AND
DEPAUL HOSPITAL,
Respondents.

**On Petition for a Writ of Certiorari to the
Supreme Court of the State of Wyoming**

RESPONDENTS' JOINT BRIEF IN OPPOSITION

OPINIONS BELOW

Petitioner seeks review of *Paravecchio v. Memorial Hospital, et al.*, 742 P.2d 1276 (Wyo. 1987) (Pet. App. 1a-16a). The decision of the trial court appears in the Appendix to this brief at 1a through 3a.

JURISDICTION

Jurisdiction is proper under 28 U.S.C. § 1257(3). The Wyoming Supreme Court rendered its opinion on September 17, 1987 and denied a Petition for Rehearing on October 7, 1987 (Pet. App. at 17a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Petitioner relies on Section One of the Fourteenth Amendment to the Constitution of the United States (Pet. at 2). In addition, portions of the Wyoming Dental Practice Act¹ and the Wyoming Medical Practice Act² deemed relevant by the Wyoming Supreme Court to its decision are quoted at length in its opinion. (Pet. App. 5a-9a.)

STATEMENT OF THE CASE

Respondents adopt Petitioner's Statement of the Case as it reflects procedural matters except to note that it is misleading to represent to this Court that the Wyoming State Board of Dental Examiners issued a ruling that a dentist anesthesiologist can also practice the full scope of clinical anesthesiology in Wyoming. The Board of Dental Examiners rendered no such ruling, as pointed out to the Wyoming Supreme Court (Appellee's Brief at 17-18).

Contrary to Petitioner's assertions, the Wyoming Supreme Court satisfactorily concluded that the Equal Protection Clause of the Fourteenth Amendment was not violated by the state licensing laws in question. The court's opinion unequivocally established the important state interest in protecting the public health and included an appropriate equal protection analysis of the economic legislation under review.

¹ Wyo. Stat. §§ 33-15-101 through 33-15-128 (1986 Cum. Supp.).

² Wyo. Stat. §§ 33-26-101 through 33-26-152 (1986 Cum. Supp.).

ARGUMENT

I. This Case Reflects Proper Statutory Interpretation With Respect To A Narrow Issue.

This case is nothing more than a statutory interpretation matter in which Dr. Paravecchio attempted to convince the Wyoming Supreme Court to extend the scope of his dental license to include the unsupervised administration of clinical anesthesia for non-dental purposes. The constitutional issue raised here was not the primary focus of Dr. Paravacchio's efforts in the court below. Instead, he focused primarily upon his interpretation of the Wyoming Dental Practice Act by attempting to redefine the scope of dentistry. The Wyoming Supreme Court's opinion unequivocally found that the Wyoming Legislature did not intend for dentists to be licensed to administer clinical anesthesia for non-dental purposes. It was the analysis of this legislative intent which laid the groundwork for the court's constitutional analysis.

This matter is not of sufficient import to parties other than those directly involved in this case to warrant review upon certiorari by this Court. To begin with, it involves an interpretation only of Wyoming's Medical and Dental Practice Acts. Future cases in other states will necessarily have to be decided upon the particular statutes involved in those states and other courts will not necessarily be bound by any pronouncement which might result from consideration of this case involving Wyoming statutes.

Petitioner fails to demonstrate why Dr. Paravecchio's attempt to practice medicine without appropriate licensure merits the scrutiny of this Court. One of the difficulties with Dr. Paravecchio's classification arguments below, as will be noted again later, was that Dr. Paravecchio did not purport to be representative of the vast majority of dentists. Instead, he attempted to carve a niche for himself and the relatively few dentists with

similar training by attempting to create a new class. Since there is no proof that even one other similarly situated practitioner lives in Wyoming where the statutes in question are applicable, this Court's valuable resources should not be wasted upon this case.

Petitioner attempts to enhance the importance of this case by asserting that this Court has considered the rights of patients as well as medical care providers in cases involving issues of health care. However, it is clear that the cases cited by Petitioner involve primarily the availability of a particular type of care (e.g., clinical abortion) from any source, while this case involves only the availability of anesthesia services from one unusually trained dentist. Petitioner cannot argue that anesthesia services are not obtainable by Wyoming patients and his unproven assertion by footnote about the use of nurse anesthetists in Wyoming should not sway this Court since Dr. Paravecchio and both Respondents in this case are located in Cheyenne, Wyoming, where a number of medical doctors practice the specialty of anesthesiology. In addition, any such use of nurse anesthetists is under the direct supervision of a licensed physician.

It is also interesting to note that this case does not involve a total prohibition against Dr. Paravecchio's practice of anesthesiology. Indeed, he admits to being able to practice in the Veterans Administration Hospital in Cheyenne, which hospital, it should be noted, is expressly exempt from Wyoming statutory regulation. Instead, Dr. Paravecchio's attempt to gain staff privileges in state-regulated institutions is a pursuit of economic interest only. Petitioner's veiled references to lack of competition in the health care field do not adequately raise any justiciable issue and are not sufficient to warrant this Court's attention to Wyoming's statute.

Finally, it is interesting to note that there is absolutely no conflict in judicial authority with respect to interpre-

tation of similar statutes in other states. Courts in Florida and Washington have interpreted their Dental Practice Acts in the same manner as the Wyoming Supreme Court has. See *Spiro v. Highlands General Hospital*, 489 So.2d 802 (Fla. App. 2 Dist. 1986) and *Everett v. State*, 661 P.2d 588 (Wash. 1983). The Washington Legislature created a special licensing category for dentist anesthesiologists *after* the *Everett* opinion. Respondents believe an attempt to achieve a legislative solution is the only proper course for Dr. Paravecchio and others like him, if there are, indeed, others like him in Wyoming. As noted by Justice White recently, the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes. *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985). If Dr. Paravecchio believes the Wyoming statutes which were upheld by the Wyoming Supreme Court are unfair or unjust, he has the right to utilize those democratic processes to attempt to effect policy change. This Court should not allow itself to become a forum for one man's effort to enhance his economic condition by non-legislative means.

II. The Wyoming Supreme Court's Constitutional Analysis Was Permissible In Result And Methodology.

The bulk of the Wyoming Supreme Court's opinion below was devoted to a determination of the legislative intent behind the Wyoming Dental Practice Act. In analyzing that legislative intent, the Wyoming Court reviewed not only the statute but its prior holdings concerning the permissibility of legislative restrictions on the practice of medicine, including clinical anesthesia. Those cases clearly established an important state interest in the quality of medical care to Wyoming citizens, an interest Petitioner cannot and does not deny.

Dr. Paravecchio has consistently attacked the Wyoming classification system which separates the practice

of medicine from the practice of dentistry. Dr. Paravecchio has done all he can to disassociate himself from the general class of dentists, since admittedly, the vast majority of that class is not trained or capable of administering anesthesia for non-dental procedures. However, Dr. Paravecchio clearly cannot place himself in the category of medical doctors due to his lack of a medical degree and medical license. In essence, Petitioner has attempted to create a separate class for himself as a residency-certified dentist anesthesiologist. Two unlike classes cannot be made indistinguishable by attaching a common label to them. *Richardson v. Belcher*, 404 U.S. 78 (1971). It is of no constitutional significance that the degree of rationality of classification is not as great with respect to certain ill-defined subparts of the classification. *New York City Transit Authority v. Beazer*, 440 U.S. 568 (1979).

Of course, as noted in the *Cleburne* case, "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166, 174-175 (1980)." (Other citations omitted.) 473 U.S. 440. The *Cleburne* opinion also noted that, "When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude, *Fritz*, *supra*, at 174 (other citations omitted), and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes." *Cleburne*, *Id.* These are precisely the standards applied by the Wyoming Supreme Court, as prior Wyoming cases had announced those same standards as well. See, e.g., *Baskin v. State ex rel. Worker's Compensation Division*, 722 P.2d 151 (Wyo. 1986).

The Wyoming court properly applied the traditional rational basis test to this economic legislation, consistent

with the precedents of this Court. See, e.g., *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955). The court properly noted the presumption of statutory constitutionality and the concomitant permissible assumptions concerning facts which could reasonably justify the statutory classification. (Pet. App. at 14a-15a.) Petitioner cites the *Cleburne* case as requiring that every rational basis analysis include a detailed factual inquiry. Respondents do not agree that the *Cleburne* decision mandates more fact finding than the Wyoming Supreme Court did in this case. The court satisfied itself that the classification of doctors versus dentists was more than simply rationally related to the public's interest in quality health care and was not arbitrary or irrational. Legislative solutions must be respected if the distinctions drawn have some basis in practical experience. *McGinnis v. Royster*, 410 U.S. 263 (1973). A traditional level of factual inquiry was all that was necessary to support the Legislature's classification in this case. Even so, the Court concluded its opinion by noting that it had given Dr. Paravecchio the benefit of all the facts he alleged in his complaint. (Pet. App. at 16a.) The Wyoming Supreme Court's opinion clearly demonstrates the basis for concluding that the Legislature's distinction between medical doctors and dentists was intentional and not unwarranted. When all was said and done, the Wyoming court simply refused to indulge in the reclassification Dr. Paravecchio sought and found that because unsupervised clinical anesthesia constitutes the practice of medicine, only those licensed to practice medicine should be allowed to do it. As noted by this Court,

The "task of classifying persons for . . . benefits . . . inevitably requires that some persons who have an almost equally strong claim to favorite treatment be placed on different sides of the line," *Mathews v. Diaz*, 426 U.S. 67, 83-84 (1976), and the fact that the line might have been drawn differently at some points is a matter for legislative, rather than judicial,

consideration. *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980).

Prior efforts to encourage judicial restructuring of health care classification statutes and regulations have failed. As noted by Petitioner, this Court has recently refused to hear a case involving efforts by osteopaths to gain full medical staff privileges. *Stern v. Tarrant County Hospital Dist.*, cert denied, ____ U.S. ___, 106 S.Ct. 1957 (1986). Petitioner's challenge here is certainly not any better candidate for discretionary review.

From the standpoint of public policy and fairness, the Wyoming court's decision is unassailable. The court left any future reclassification decision to the Legislature and did not attempt a piecemeal dissection of health care classifications solely for the benefit of one individual. For this Court to grant Dr. Paravecchio's petition would send a needless and dangerous message that an individual might hope to gain membership by judicial means in another profession without meeting all of the legitimate statutory criteria for membership. The Legislature is certainly better able than this court to deal with "special" cases such as Dr. Paravecchio's. Neither its method for dealing with these cases nor its result should be mandated by a decision of this Court.

CONCLUSION

Dr. Paravecchio's petition fails to establish that this case warrants review by this Court for either policy or procedural reasons. The Wyoming Supreme Court arrived at its decision in a permissible fashion consistent with time-honored principles of equal protection analysis of economic regulation statutes. This Court ought not accept Dr. Paravecchio's invitation to impose improper and unwarranted scrutiny upon the Wyoming court's efforts. The Petition for a Writ of Certiorari to the Wyoming Supreme Court must be summarily denied.

Respectfully submitted,

W. PERRY DRAY *
GREGORY C. DYEKMAN
DRAY, MADISON & THOMPSON, P.C.
204 East 22nd Street
Cheyenne, Wyoming 82003-3799
(307) 634-8891
*Counsel for Memorial Hospital
of Laramie County*

DAVID H. CARMICHAEL *
CARMICHAEL, MCNIFF & PATTON
1920 Thomes Avenue, Suite 600
P.O. Box 945
Cheyenne, Wyoming 82003-0945
(307) 635-4111
Counsel for DePaul Hospital

* Counsel of Record



APPENDIX

**THE STATE OF WYOMING
FIRST JUDICIAL DISTRICT**

[SEAL]

**Edward L. Grant
Judge**

**Laramie County Courthouse
Cheyenne, Wyoming
82001**

October 27, 1986

**Thomas Long
Hirst & Applegate
200 New Boyd Building
Cheyenne, WY 82001**

**Perry Dray
Dray, Madison & Thomson
204 East 20th St.
Cheyenne, WY 82001**

**David Carmichael
Carmichael, McNiff & Patton
1920 Thomes Ave.
Cheyenne, WY 82001**

[Filed Oct. 28, 1986]

**RE: Parravecchio v. Memorial Hospital, et al.
Civil Docket No. 110-248**

Dear Counsel:

I have had under advisement the parties' motions to dismiss and for joinder, under Rule 19(b), of the State Board. Since hearing arguments on the motions, I have reviewed the files and the memoranda and have reviewed a memorandum prepared by Michele McKellar. I have concluded that the Motion to Join the State Board should be denied and that the hospitals' Motion to Dismiss should be granted. Mr. Dray and Mr. Carmichael will please submit the appropriate orders.

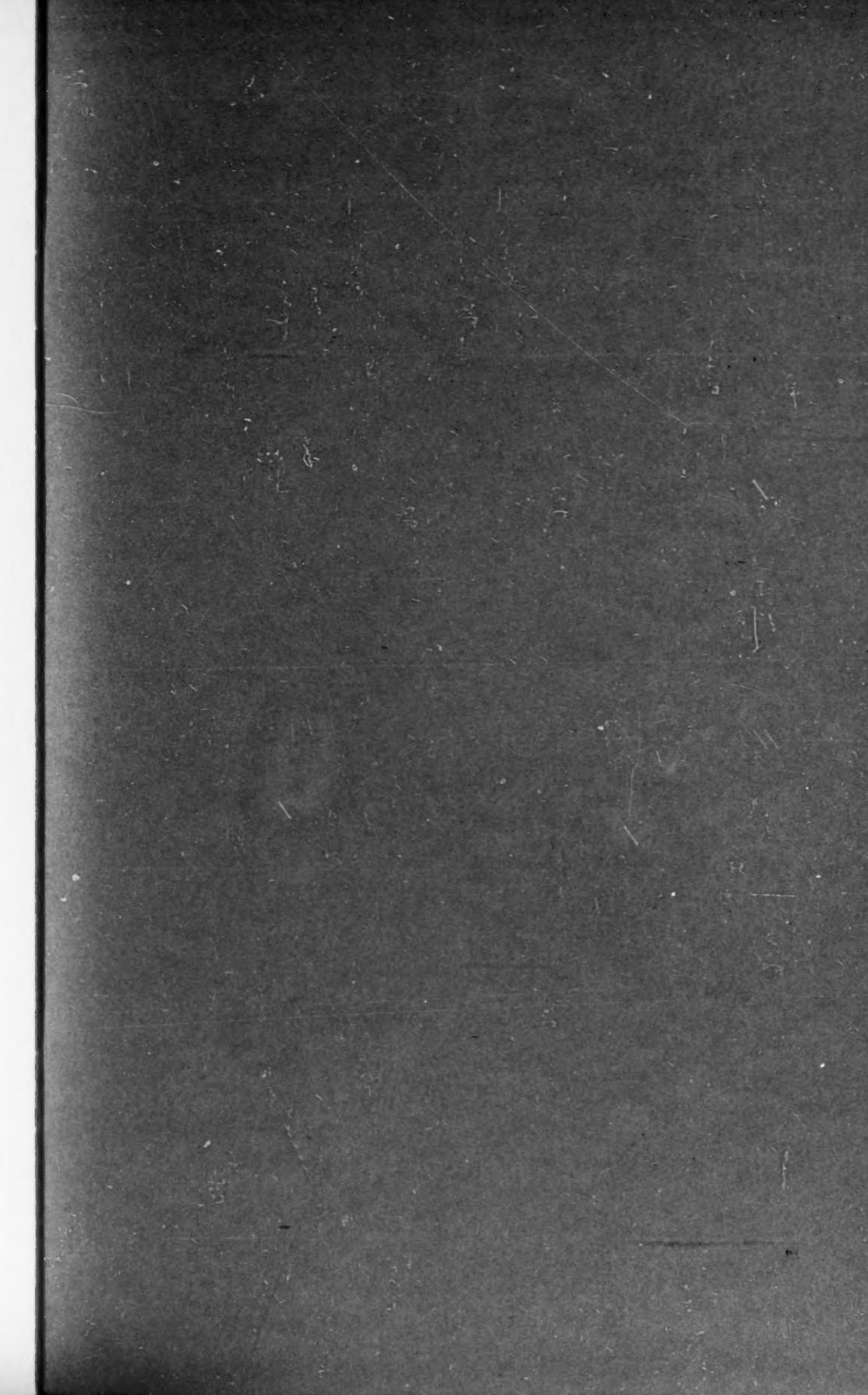
Plaintiff contends essentially that the hospitals misinterpret and wrongly apply the Medical Practices Act and other statutory provisions to prevent Plaintiff from practicing general unsupervised anesthesiology and that if the hospitals are in fact correctly interpreting and applying the statutes, these statutes are unconstitutional as a denial of equal protection. To me a plain reading of the statutes is that a dentist is not authorized under Wyoming Law to practice clinical anesthesiology without a physician's license. Of course, statutes carry a strong presumption of constitutionality.

The Plaintiff carries the burden to demonstrate that a classification is without reasonable basis and essentially arbitrary. It appears that such burden has not been met in this case, but rather that the legislature has acted pursuant to a legitimate state interest in protecting the public health and safety and that the classification scheme of the Wyoming Dental Practices Act and of the Medical Practices Act are not arbitrary. Therefore, this Court must decline the invitation to declare them unconstitutional as they relate to the facts and issues of this case.

Very truly yours,

/s/ Edward L. Grant
EDWARD L. GRANT
District Judge

ELG/adp



MOTION FILED
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(3)

No. 87-1119

In The
Supreme Court of the United States
October Term, 1987

—0—

RUSSELL F. PARAVECCHIO, D.M.D.,
Petitioner,

v.

MEMORIAL HOSPITAL OF LARAMIE COUNTY,
AND
DePAUL HOSPITAL,

Respondents.

—0—

**On Petition For A Writ Of Certiorari To The
Supreme Court Of The State Of Wyoming**

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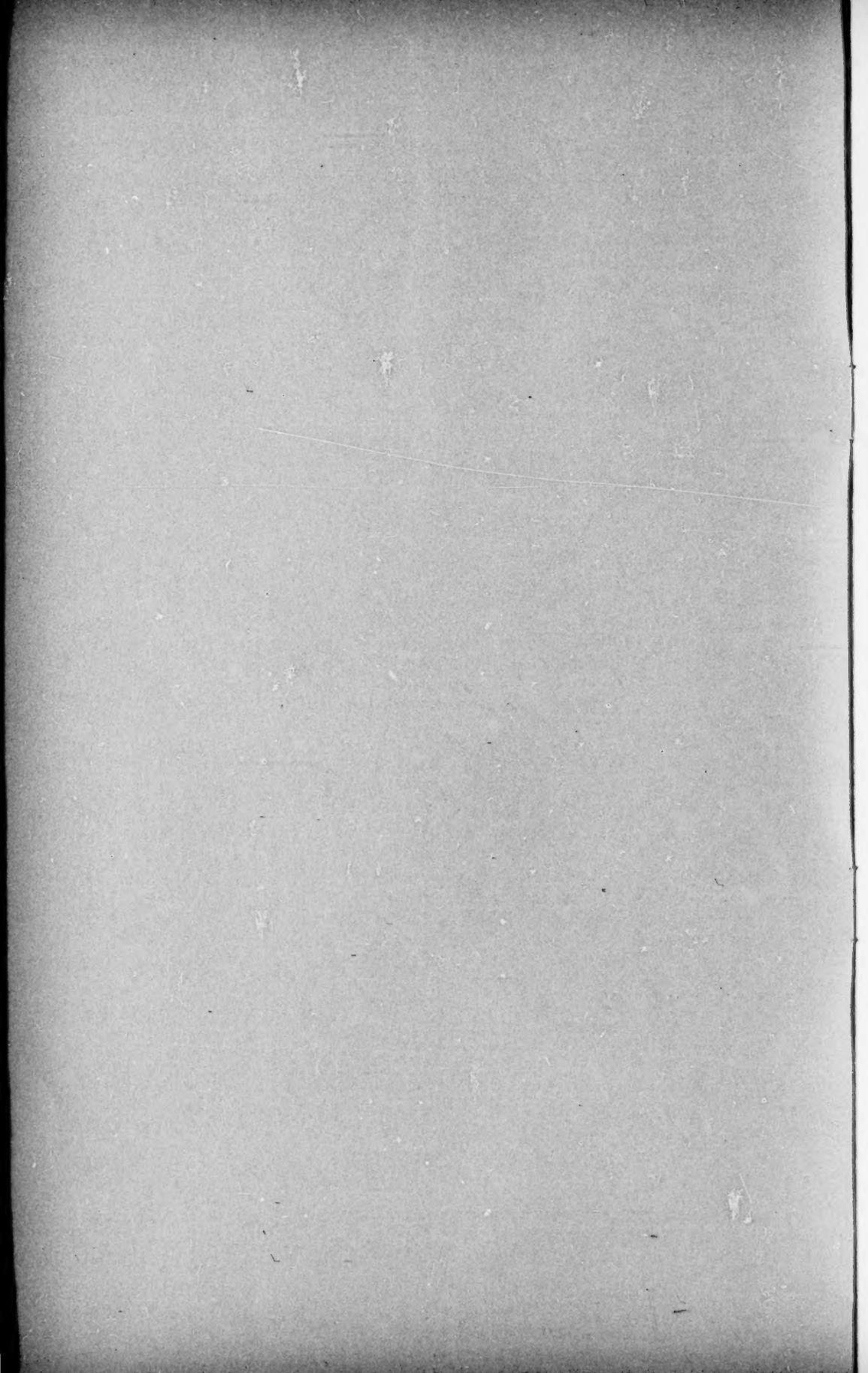
**MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND
BRIEF AMICI CURIAE OF DEAN CROCKER, M.D., HARRY J.
LOWE, M.D., MICHAEL STANTON-HICKS, M.D., DR. PETER
JOHNSON, DR. GAITHER B. EVERETT, DR. CHARLES KEND-
RICK, DR. PETER M. LISTRO, DR. DAN ROELOFS, DR. AN-
THONY LaSALLE, DR. PAUL HUBBELL, DR. VICTOR SPIRO, DR.
DANIEL L. ORR II, DR. JOHN H. HUNTER, DR. RANDALL D.
DAVIES, DR. MILTON D. BOWLES AND DR. JAMES FRANK-
LIN SHAW IN SUPPORT OF PETITIONER**

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Hugh A. Burns
Burns & Figa, P.C.
Ptarmigan Place, Suite 280
3773 Cherry Creek North Drive
Denver, Colorado 80209
Telephone: (303) 399-4636

Attorney for Amici Curiae

10 pp



Motion for Leave to File Brief Amici Curiae

Consent having been refused by at least one of the Respondents, *Amici Curiae* respectfully move the Court to permit the filing of the attached Brief *Amici Curiae* of Dean Crocker, M.D., et al., for the following reasons:

1. *Amici's* interest in this case is to help the Petitioner establish his right and the right of other dentist anesthesiologists under the Constitution of the United States to practice general anesthesiology throughout the United States in the public interest.
2. *Amici* believe that the parties have not and cannot adequately address the fundamental factual basis of Petitioner's Petition for a Writ of Certiorari, namely, that dentist anesthesiologists are as qualified by training and experience as M.D. anesthesiologists to administer general anesthesiology. *Amici* are M.D. anesthesiologists who are past or present chiefs of anesthesiology residency programs, dentist anesthesiologists who train both M.D. and dentist anesthesiologists in their residencies, and dentist anesthesiologists similarly situated to Petitioner, who in some cases successfully, and in other cases unsuccessfully, have lawfully sought to practice general anesthesiology. Together they help to establish, as Petitioner alone cannot, that dentist anesthesiologists are as qualified by training and experience as M.D. anesthesiologists to administer general anesthesiology.

Respectfully submitted,

Hugh A. Burns
Burns & Figa, P.C.
Ptarmigan Place, Suite 280
3773 Cherry Creek North Drive
Denver, Colorado 80209
Telephone: (303) 399-4636

Attorney for Amici Curiae
Dean Crocker, M.D.
Harry J. Lowe, M.D.
Michael Stanton-Hicks, M.D.
Dr. Peter Johnson
Dr. Gaither B. Everett
Dr. Charles Kendrick
Dr. Peter M. Listro
Dr. Dan Roelofs
Dr. Anthony LaSalle
Dr. Paul Hubbell
Dr. Victor Spiro
Dr. Daniel L. Orr II
Dr. John H. Hunter
Dr. Randall D. Davies
Dr. Milton D. Bowles
Dr. James Franklin Shaw

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Brief Amici Curiae of Dean Crocker, M.D., ET AL.

INTEREST OF THE AMICI CURIAE

There are three categories of *amici* who wish to appear here: M.D. chiefs of anesthesiology residencies who have trained both dentist and physician anesthesiologists; dentist anesthesiologists who are now professors of anesthesiology in accredited residencies; and a few of the dentist anesthesiologists similarly situated to Petitioner.

Dean Crocker, M.D., is the Chief of Anesthesia and Director of Residency and Surgical Anesthesiology at Boston City Hospital. Harry J. Lowe, M.D., is former Chairman of Anesthesia, University of Chicago, and currently serves as clinical professor of anesthesiology at the Los Angeles County, University of Southern California Medical Center. Michael Stanton-Hicks, M.D., is former Chairman of Anesthesiology at the University of Massachusetts and the University of Colorado Health Sciences Center. Dr. Stanton-Hicks is currently on sabbatical teaching anesthesiology at Der Johannes Gutenberg Universitat, Mainz, Federal Republic of Germany.

These *amici* have directed anesthesia residencies at their respective institutions and have trained physicians and dentists to equal competency to serve as general surgical anesthesiologists. These *amici* are aware that the equally competent dentist anesthesiologists often are unable to practice the science for which they were trained due

to widespread misunderstanding of the training given and an arbitrary bias generally held by some physicians against dentist anesthesiologists.

Dr. Peter Johnson is a dentist anesthesiologist serving as an associate professor of anesthesiology at the University of Illinois. Dr. Gaither B. Everett¹ is a dentist anesthesiologist and associate professor of anesthesiology at the University of Cincinnati. Drs. Charles Kendrick and Peter M. Listro are dentist anesthesiologists and associate professors of anesthesiology at Boston City Hospital. Dr. Dan Roelofs is a dentist anesthesiologist and assistant professor of anesthesiology at the University of Kansas, and Chief of Anesthesia at the Kansas City Veteran's Administration Medical Center.

Dr. Anthony LaSalle is a dentist anesthesiologist serving as Chief of Anesthesiology at the Humana Medical Center, Overland Park, Kansas.

Additionally, Drs. Paul Hubbell,² Victor Spiro,³ Daniel L. Orr II, John H. Hunter, Randall O. Davies, Milton D. Boles and James Franklin Shaw⁴ are a few of the dentist anesthesiologists similarly situated to Petitioner in this action.

¹ Drs. Everett and Spiro have unsuccessfully challenged state laws limiting their practices. *Everett v. State of Washington*, 99 Wash.2d 264, 661 P.2d 588 (1983); *Spiro v. Highlands General Hospital*, 489 So.2d 802 (Fla. App. 1986).

² Drs. Hubbell and Shaw are currently litigating the denial of their rights to practice anesthesiology in Louisiana and Tennessee, respectively.

³ See Footnote 1.

⁴ See Footnote 2.

The collective *amici* wish to make known to the Court that Petitioner's circumstance is most certainly not an isolated occurrence.

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SUMMARY OF THE ARGUMENT

Dentist anesthesiologists are as qualified by training and experience as M.D. anesthesiologists to administer general anesthesiology. The decision of the Supreme Court of Wyoming in this case prohibiting dentist anesthesiologists from so doing ignores this reality and violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States by applying a classification not rationally related to the goal of the furtherance of the public health, safety, and welfare.

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ARGUMENT

Throughout the over 100-year history of anesthesiology in the United States, dentists have made significant contributions to the science. Dr. Horace Wells, a dentist, was the founder of professional anesthesiology. His work with nitrous oxide as a pain killer and anesthetic agent began in 1844.

The first surgical procedure under general anesthesia was performed at Massachusetts General Hospital in 1846. The anesthesia was administered by Dr. William Thomas Green Morton, a dentist.

From the inception of anesthesiology as a science and a specialty, dentists have been continuously involved in the practice and teaching of anesthesiology, as well as major contributors to the advancement of the science through research and professional dissemination of their findings.

Anesthesia techniques range from the relatively simple to the complex in medicine and dentistry, but in both cases the effect of general anesthesia is upon the whole body of the patient.

For the continued scientific advancement and professional interaction between sciences which ultimately benefit mankind, modern anesthesiology residencies recognize the need to train dentists and physicians who are needed to practice anesthesiology to equal competency.

Dentists who have been so trained have met with mixed success in pursuit of the practice of their specialty. Hence, while Petitioner here is authorized to practice in the Veterans Administration hospitals, which recognize his competency, he is precluded in private hospitals where privileges are granted by those against whom he would compete. *Amicus Everett*, denied the ability to practice anesthesiology in the State of Washington, now teaches anesthesiology to physicians who will suffer no such bar.

The decision of the Wyoming Supreme Court demonstrates an inappropriate constitutional analysis which perpetuates a bias which each of the dentist anesthesiologist *amici* has experienced.

The flaw in the Wyoming decision is that it flows from an incorrect, and constitutionally deficient, premise. The decision is based upon the necessary finding that a rele-

tant distinction exists between a fully trained dentist anesthesiologist and a physician anesthesiologist to administer non-dental general anesthesia.

In *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432 (1985), this Court announced the rule that under the appropriate test for determining the constitutionality of a legislative classification a court may not rely upon any conceivable justification in support of the classification. Rather, the court must take the next step to determine whether the classification, in fact, rationally furthers the stated goal.

Thus, for example, the Court rejected the rationale offered that prohibition of group homes for the mentally retarded would reduce congestion where equally congestive uses were allowed. *Cleburne*, 473 U.S. 449-450. The Wyoming decision fails to recognize and follow this analysis in a subtle but crucial way.

By assuming, without disclosing, a state of facts which encompasses a relevant distinction between dentist anesthesiologists and physicians who would practice anesthesiology, the Wyoming Supreme Court announced that there exists a rational basis which supports the classification. To announce that there is a difference between dentists and physicians is no more satisfactory, in equal protection analysis, than the difference recognized between retarded people and fraternity members in *Cleburne*. Just as the goal of reducing congestion was not rationally served by the City of Cleburne ordinance, the goal of protecting the public health, safety and welfare, forwarded by Wyoming, is not furthered by the exclusion of fully competent practitioners of anesthesiology.

Because the Wyoming decision is based upon a demonstrably false premise, the classification is not rationally related to the legitimate goal of the furtherance of public health, safety and welfare. Simultaneously, the Wyoming decision perpetuates an unsupportable bias which adversely impacts upon each of the *amici* and the general public which they are competent and qualified to serve.

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CONCLUSION

For the reasons stated herein, *Amici Curiae* respectfully urge the granting of the Petition.

Respectfully Submitted,

Hugh A. Burns
Burns & Figa, P.C.
Ptarmigan Place, Suite 280
3773 Cherry Creek North Drive
Denver, Colorado 80209
Telephone: (303) 399-4636

Attorney for Amici Curiae

No. 87-1119

Supreme Court, U.S.

F I L E D

FEB 22 1988

JOSEPH F. SPANIOL, JR.

Clerk

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

RUSSELL F. PARAVECCHIO, D.M.D.,
Petitioner,

v.

MEMORIAL HOSPITAL OF LARAMIE COUNTY,
and
DEPAUL HOSPITAL,
Respondents.

**On Petition for a Writ of Certiorari to the
Supreme Court of the State of Wyoming**

REPLY BRIEF

BRUCE A. SALZBURG *
FREUDENTHAL, SALZBURG, BONDS &
RIDEOUT, P.C.
314 East 21st Street
Cheyenne, Wyoming 82003-0387
(307) 634-2240

JONATHAN B. SALLET
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
(202) 293-6400

* Counsel of Record

5/21/

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REPLY BRIEF

In his opening brief, the petitioner, Dr. Russell F. Paravecchio, demonstrated that this Court should consider (and reverse) the decision of the Wyoming Supreme Court that (i) failed to ask, at all, whether legitimate state goals are furthered by a classification scheme that bars a fully-qualified person from acting as an anesthesiologist, and (ii) relied on undisclosed facts that are contravened by the uncontroverted allegations of the complaint.

In their Joint Brief in Opposition, the respondents rely on four arguments, none of which supports denial of Dr. Paravecchio's petition. *First*, the respondents contend that this case turns on a question of state law and they cite state law cases that did not consider any federal constitutional argument. See *Spiro v. Highlands General Hospital*, 489 So.2d 802 (Fla. App. 1986); *Everett v. State*, 661 P.2d 588 (Wash. 1983). But the federal constitutional claim was raised in this case and decided, even if erroneously, by the Wyoming Supreme Court. App. at 15a-16a.

Second, the respondents assert that the constitutional issue is not important and that its impact is limited to Wyoming alone. But the opposite is true. As demonstrated by the Motion for Leave to File Brief Amici Curiae, the exclusion from the practice of anesthesiology of fully-certified dentists is an issue of national concern. The Wyoming classification is only symptomatic of a larger problem concerning prohibitions imposed on fully-qualified medical health professionals. Thus, contrary to the suggestion of the respondents, the ability of consumers to seek fully-qualified health care is an issue of significant—and continuing—importance.

Third, the respondents contend that a factual distinction exists between dentists and physicians that, under the traditional "rational basis test," supports the state court decision. In this case, however, the only relevant "facts" are the allegations of the complaint, which must be taken as true, that Dr. Paravecchio is completely and fully qualified to serve as an anesthesiologist. Those facts completely refute any suggested compromise to public safety. That petitioner is authorized to practice general anesthesiology at a federal hospital in Cheyenne, but not a few blocks away at respondent hospitals, is eloquent evidence by itself of the fundamental irrationality of the classification.

The respondents, like the state court, merely assert, in a conclusionary fashion, that these facts are insufficient. But, also like the state court, they completely fail to provide any rational explanation for a licensing statute that bars a fully-qualified dentist from obtaining the necessary license.¹ Petitioner has been educated, trained and certified to be *equal* to physicians in the delivery of anesthesiological services. Contrary to the "almost equally strong claim to favored treatment" discussed in *Mathews v. Diaz*, 426 U.S. 67, 83 (1976) (emphasis added), petitioner asserts, and he is entitled to prove, that mere labeling does not create a rational distinction sufficient to support the classification at issue here.

Fourth, the respondents assert that Dr. Paravecchio, despite his special training and residency certification may properly be lumped together with dentists who have not received such training. But it is precisely because of this training that petitioner asserts his constitutional claim. Moreover, oral and maxillofacial surgeons, a subclass of residency trained dentists also few in number, are recognized for their equality of training and are privileged by respondent hospitals to practice their specialty, which also includes non-dental procedures nowhere found in the Wyoming Dental Practice Act. Thus, the respondents' contention in this instance only demonstrates the irrationality of the legislative scheme.

Respondents' approach to this case has been to consistently assert, without proof, a factual distinction between petitioner and physicians, while simultaneously laboring to exclude information and argument which

¹ More importantly, respondents here assert factual arguments which they did not, and could not, prove at the trial level. For example, respondents now improperly assert a factual argument denying that the Board of Dental Examiners issued the ruling alleged in the Amended Complaints. Respondents' Brief in Opposition at p. 2.

belies their position. Their inability to muster any reasonable defense of the State court decision thus demonstrates that the Wyoming Supreme Court substantially departed from the mode of analysis required by the Equal Protection Clause.

CONCLUSION

This petition brings to the Court an important question that concerns the adequate provision of health care by qualified professionals and that demonstrates a fundamental misunderstanding of the Equal Protection Clause by a state supreme court. The Petition for Writ of Certiorari should, therefore, be granted.

Respectfully submitted,

BRUCE A. SALZBURG *
FREUDENTHAL, SALZBURG, BONDS &
RIDEOUT, P.C.
314 East 21st Street
Cheyenne, Wyoming 82003-0387
(307) 634-2240

JONATHAN B. SALLET
MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
(202) 293-6400

* Counsel of Record

